Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 69 (Chair, Budget and Taxation Committee)(By Request - Departmental - Comptroller)

Budget and Taxation Ways and Means and Economic Matters

Tobacco Products - Tobacco Tax - Exemptions and Penalties

This departmental bill increases the amount of cigarettes and other tobacco products that a consumer may bring into the State without being required to pay the tobacco tax. The bill also increases and makes mandatory the monetary criminal penalties associated with willfully shipping, importing, selling into or within, or transporting within the State cigarettes or other tobacco products on which the tobacco tax has not been paid.

Fiscal Summary

State Effect: General fund revenues increase significantly beginning in FY 2014 – by up to $1.2 million on an annualized basis – due to the collection of monetary penalties that are increased and made mandatory by the bill. Enforcement can be handled with existing resources.

Local Effect: The bill does not materially affect local operations or finances.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small businesses (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law: Under current law, the tobacco tax does not apply to cigarettes or other tobacco products brought into the State by a *nonresident* consumer traveling through the State if the quantity of cigarettes does not exceed one carton or the retail value of other tobacco products does not exceed $25. For any other consumer to be exempt from the tobacco tax, the quantity of cigarettes must not exceed two packages and the retail value of other tobacco products must not exceed $5.

The tobacco tax also does not apply, under current law, to cigarettes or other tobacco products brought into the State from a U.S. Armed Forces installation or reservation by a consumer who is a member of the Armed Forces (and is entitled by law to make a purchase at an Armed Forces exchange) if the quantity of cigarettes does not exceed two cartons and the retail value of other tobacco products does not exceed $50. For any other consumer to be exempt from the tobacco tax on products bought at an Armed Forces exchange or commissary, the quantity of cigarettes must not exceed two packages and the retail value of other tobacco products must not exceed $5.

The bill increases the above limits and repeals the distinctions made in current law between types of consumers. Specifically, the bill increases the limit on the quantity of cigarettes to five cartons and the retail value of other tobacco products to $100.

Current law specifies that an individual who willfully ships, imports, sells into or within, or transports within the State cigarettes or other tobacco products on which the tobacco tax has not been paid in violation of specified laws is guilty of a felony and, on conviction, is subject to a fine of up to $50 for each carton of cigarettes or each package of other tobacco products transported, or imprisonment for up to two years, or both. The bill increases monetary penalties to (1) for a first violation, a mandatory fine of $150 for each carton or package transported and (2) for a subsequent violation, a mandatory fine of $300 for each carton or package transported.

Background: Tobacco products are subject to varying levels of taxation in different jurisdictions. According to the U.S. Government Accountability Office (GAO), this creates opportunities and incentives for illicit trade. The Comptroller's Office advises that its field enforcement agents have, in recent years, seized large quantities of contraband cigarettes; this is largely attributable to Maryland's location on the I-95 corridor immediately north of Virginia (which has the second-lowest tobacco tax in the nation) and south of the comparatively high-tax Northeast.

According to GAO, another incentive to engage in the illicit trade of tobacco products is that penalties for the activity are comparatively less severe than penalties for other forms of illicit trade. The Comptroller's Office advises that the State's current fine ($50 per carton) is inadequate to deter smuggling, given that it is exceeded by the difference in tax remittance (over $55) per carton purchased in Virginia and sold in New York City. The Comptroller's Office further advises that the proposed increases in fines for engaging in the illicit trade of tobacco products would correspond with increases in the cigarette tax rate that took place between 1999 and 2008 as well as with the federal tax increase on other tobacco products that occurred in 2009.

State Fiscal Effect: The Comptroller's Office advises that, from fiscal 2007 through 2011, its Field Enforcement Division charged an average of 15 initial incidents and 3 subsequent incidents of illicit tobacco trade annually. In fiscal 2012, however, the number of initial incidents increased significantly – to 88 – while the number of subsequent incidents remained constant at 3. The Comptroller's Office further advises that, on average in fiscal 2012, each initial incident involved 399 cartons of cigarettes and each subsequent incident involved 565 cartons, while the average fine imposed per incident was $1,799 – well below the $50 cap per carton allowed under current law. Thus, the maximum allowable fine is seldom, if ever, imposed in practice.

The bill's increased penalties may have a deterrent effect on the illicit trade of tobacco, resulting in fewer incidents being charged per year. However, DLS advises that, based on the volume of cartons seized per year, the bill's increased (and mandatory) monetary penalties are likely to result in a significant increase in general fund revenues.

For illustrative purposes only, if the volume of cartons seized per year is consistent with even the average amount seized from fiscal 2007 through 2011, general fund revenues may increase by up to $1.2 million on an annualized basis beginning in fiscal 2014. Furthermore, fine revenues are expected to increase even if the bill's deterrent effect results in a significant decrease in the number of incidents charged per year. For example, fine revenues from the increased (and, under the bill, mandatory) monetary penalties for just one subsequent offense involving the average amount of cartons (565) total $169,500 – slightly higher than the total amount of fine revenues collected for all initial *and* subsequent offenses in fiscal 2012 ($163,709).

The Comptroller's Office advises that relatively few of the incidents charged over the past five years resulted in imprisonment. Accordingly, neither the Comptroller's Office nor DLS anticipates any decrease in incarceration costs due to a deterrent effect.

Additional Information

Prior Introductions: HB 346 of 2012, a similar bill, passed the House and received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, SB 120, also received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Cross File: None.

Information Source(s): U.S. Government Accountability Office, Comptroller's Office, Department of Legislative Services

Fiscal Note History:	First Reader - January 28, 2013
mc/ljm	Revised - Senate Third Reader - March 26, 2013

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Tobacco Products – Tobacco Tax – Exemptions and Penalties

BILL NUMBER: SB 69

PREPARED BY: Comptroller

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.