

Chapter 37

(House Bill 732 of the 2020 Regular Session)

AN ACT concerning

~~Electronic Smoking Devices, Other Tobacco Products, and Cigarettes~~
~~Taxation and Regulation – Tobacco Tax, Sales and Use Tax, and Digital~~
~~Advertising Gross Revenues Tax~~

FOR the purpose of ~~applying certain provisions of tax law regulating the sale, manufacture, distribution, possession, and use of cigarettes and other tobacco products to certain electronic smoking devices; altering the definition of “other tobacco products” to include certain consumable products and the components or parts of those products and to exclude certain other products; requiring the Governor, for a certain fiscal year and for each fiscal year thereafter, to include at least a certain appropriation in the annual budget years, to include in the annual budget bill an appropriation for certain activities; establishing a certain sales and use tax rate for open electronic smoking devices; altering the definition of “electronic smoking device” to exclude certain batteries or battery chargers; imposing the tobacco tax on certain electronic smoking devices; repealing the prohibition on a county, a municipal corporation, a special taxing district, or any other political subdivision from imposing a tax on cigarettes or tobacco products; establishing a presumption that an electronic smoking device is subject to the tobacco tax; establishing that certain electronic smoking devices are contraband products; establishing the burden of proving that an electronic smoking device is not subject to the tobacco tax; providing exemptions from the tobacco tax for certain electronic smoking devices; altering the tobacco tax rate for certain cigarettes and other tobacco products; setting the tobacco tax rate for electronic smoking devices; requiring certain persons to pay the tobacco tax on certain electronic smoking devices and to file certain returns; requiring certain wholesalers to keep and allow inspection of certain records for certain sales of electronic smoking devices; altering the definition of “out of state sellers” to include certain persons who sell, ship, or deliver cigarettes, cigarettes or other tobacco products, and electronic smoking devices; requiring out of state sellers to pay the tobacco tax on cigarettes, cigarettes or other tobacco products, and electronic smoking devices on which the tobacco tax has not been paid; making certain electronic smoking devices subject to certain enforcement provisions applicable to cigarettes and other tobacco products; prohibiting certain acts relating to electronic smoking devices; authorizing the Comptroller to require an electronic smoking devices wholesaler to post security in a certain amount; imposing certain requirements relating to certain transportation of other tobacco products; clarifying that all electronic smoking devices used, possessed, or held in the State on or after a certain date providing that all cigarettes or other tobacco products used, possessed, or held in the State on or after certain dates are subject to the tax enacted under this Act; authorizing the Comptroller to determine the method of assessing and collecting certain additional taxes; requiring certain additional taxes to be remitted to the~~

~~Comptroller by a certain date; requiring the Comptroller to distribute certain revenue attributable to certain taxes to The Blueprint for Maryland's Future Fund; making conforming changes; defining certain terms; altering certain definitions; repealing certain obsolete provisions; making stylistic changes; providing for the termination of certain provisions of this Act; providing for a delayed effective date for certain provisions of this Act; and generally relating to the taxation and regulation of electronic smoking devices, other tobacco products, and cigarettes altering the sales and use tax rate imposed on sales of certain electronic smoking devices and vaping liquid; prohibiting a county, a municipal corporation, a special taxing district, or any other political subdivision, subject to a certain exception, from imposing a tax on electronic smoking devices; altering the tobacco tax rate for certain cigarettes and other tobacco products; imposing a tax on certain annual gross revenues derived from certain digital advertising services in the State; providing for the calculation of the part of the annual gross revenues of a person derived from digital advertising services in the State; providing for the calculation of the tax; requiring certain persons that have certain annual gross revenues derived from digital advertising services in the State to complete and file with the Comptroller a certain return in a certain manner; requiring certain persons that reasonably expect the person's annual gross revenues derived from digital advertising services to exceed a certain amount to complete and file with the Comptroller a certain declaration of estimated tax in a certain manner; requiring a person required to file a certain return to maintain certain records; requiring a person to pay the digital advertising gross revenues tax in a certain manner; requiring the Comptroller to distribute digital advertising gross revenues tax revenue in a certain manner; requiring the Comptroller to make an assessment of certain digital advertising gross revenues tax due under certain circumstances; requiring the Comptroller to assess interest on unpaid digital advertising gross revenues taxes in a certain manner; providing certain criminal penalties for failing to file a certain return or filing a certain false return; requiring that the Comptroller administer the laws that relate to the digital advertising gross revenues tax; requiring that all cigarettes and other tobacco products used, possessed, or held in the State on or after a certain date are subject to the tax enacted under certain sections of this Act; authorizing the Comptroller to determine the method of assessing and collecting certain additional taxes; requiring certain additional taxes to be remitted to the Comptroller by a certain date; requiring the Comptroller to report to certain committees of the General Assembly on or before a certain date; requiring the Governor, for certain fiscal years, to include in the annual budget bill certain appropriations; declaring the intent of the General Assembly; defining certain terms; altering the definition of certain terms; making certain conforming changes; providing for the application of this Act; and generally relating to the tobacco tax, sales and use tax, and a digital advertising gross revenues tax.~~

BY repealing and reenacting, without amendments,
Article – Business Regulation
Section 16.5–101(a) and 16.7–101(a), (d) through (g), and (j)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 16.5–101(i) and 16.7–101(c)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 13–1015
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 1–101(a) and (p), 11–104(a), and 12–101(a)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY adding to
Article – Tax – General
Section 1–101(g-1); 2–4A–01 and 2–4A–02 to be under the new subtitle “Subtitle 4A,
Digital Advertising Gross Revenues Tax Revenue Distribution”; 7.5–101
through 7.5–301 to be under the new title “Title 7.5. Digital Advertising Gross
Revenues Tax”; and 11–104(j), 13–402(a)(6), and 13–1001(g)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 2–102, 12–101(d), 12–102, 12–105, 13–402(a)(4) and (5), 13–602(a),
13–702(a), 13–1002(b) and (c), and 13–1101(b) and (c)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Education
Section 5–219(b)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Education
Section 5–219(f)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

~~BY repealing and reenacting, with amendments,
 Article — Health — General
 Section 13-1015
 Annotated Code of Maryland
 (2019 Replacement Volume)~~

~~BY repealing and reenacting, with amendments,
 Article — Tax — General
 Section 12-101 through 12-302, 13-408, 13-825(h), 13-834(e), 13-836(b)(2), 13-837,
 13-839, 13-1014, and 13-1015 2-1303(a), 12-101, 12-102, 12-105, 12-201,
and 12-302
 Annotated Code of Maryland
 (2016 Replacement Volume and 2019 Supplement)~~

~~BY adding to
 Article — Tax — General
 Section 2-1602.1 and 11-104(j)
 Annotated Code of Maryland
 (2016 Replacement Volume and 2019 Supplement)~~

~~BY repealing and reenacting, without amendments,
 Article — Tax — General
 Section 13-834(a) and 13-836(a)(1) 12-102
 Annotated Code of Maryland
 (2016 Replacement Volume and 2019 Supplement)~~

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

Article – Business Regulation

16.5–101.

(a) In this title the following words have the meanings indicated.

(i) **(1)** “Other tobacco products” means, **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A PRODUCT THAT IS:**

[(1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or

(2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff]

(I) INTENDED FOR HUMAN CONSUMPTION OR LIKELY TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED, OR INGESTED IN ANY OTHER MANNER, AND THAT IS MADE OF OR DERIVED FROM, OR THAT CONTAINS:

- 1. TOBACCO; OR**
- 2. NICOTINE; OR**

(II) A COMPONENT OR PART USED IN A CONSUMABLE PRODUCT DESCRIBED UNDER ITEM (I) OF THIS PARAGRAPH.

(2) “OTHER TOBACCO PRODUCTS” INCLUDES:

(I) CIGARS, PREMIUM CIGARS, PIPE TOBACCO, CHEWING TOBACCO, SNUFF, AND SNUS; AND

(II) FILTERS, ROLLING PAPERS, PIPES, AND HOOKAHS.

(3) “OTHER TOBACCO PRODUCTS” DOES NOT INCLUDE:

(I) CIGARETTES;

(II) ELECTRONIC SMOKING DEVICES; OR

(III) DRUGS, DEVICES, OR COMBINATION PRODUCTS AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

16.7–101.

(a) In this title the following words have the meanings indicated.

(c) (1) “Electronic smoking device” means a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device.

(2) “Electronic smoking device” includes:

(i) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and

(ii) **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION**, any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device.

(3) “Electronic smoking device” does not include:

(I) a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; **OR**

(II) A BATTERY OR BATTERY CHARGER WHEN SOLD SEPARATELY.

(d) “Electronic smoking devices manufacturer” means a person that:

(1) manufactures, mixes, or otherwise produces electronic smoking devices intended for sale in the State, including electronic smoking devices intended for sale in the United States through an importer; and

(2) (i) sells electronic smoking devices to a consumer, if the consumer purchases or orders the devices through the mail, a computer network, a telephonic network, or another electronic network, a licensed electronic smoking devices wholesaler distributor, or a licensed electronic smoking devices wholesaler importer in the State;

(ii) if the electronic smoking devices manufacturer also holds a license to act as an electronic smoking devices retailer or a vape shop vendor, sells electronic smoking devices to consumers located in the State; or

(iii) unless otherwise prohibited or restricted under local law, this article, or the Criminal Law Article, distributes sample electronic smoking devices to a licensed electronic smoking devices retailer or vape shop vendor.

(e) “Electronic smoking devices retailer” means a person that:

(1) sells electronic smoking devices to consumers;

(2) holds electronic smoking devices for sale to consumers; or

(3) unless otherwise prohibited or restricted under local law, this article, the Criminal Law Article, or § 24–305 of the Health – General Article, distributes sample electronic smoking devices to consumers in the State.

(f) “Electronic smoking devices wholesaler distributor” means a person that:

(1) obtains at least 70% of its electronic smoking devices from a holder of an electronic smoking devices manufacturer license under this subtitle or a business entity located in the United States; and

(2) (i) holds electronic smoking devices for sale to another person for resale; or

(ii) sells electronic smoking devices to another person for resale.

(g) “Electronic smoking devices wholesaler importer” means a person that:

(1) obtains at least 70% of its electronic smoking devices from a business entity located in a foreign country; and

(2) (i) holds electronic smoking devices for sale to another person for resale; or

(ii) sells electronic smoking devices to another person for resale.

(j) “Vape shop vendor” means an electronic smoking devices business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of electronic smoking devices and related accessories.

~~Article – Education~~

~~5-219.~~

~~(b) There is The Blueprint for Maryland’s Future Fund.~~

~~(f) The Fund consists of:~~

~~(1) Revenue distributed to the Fund under §§ 2-605.1, 2-1303, AND 2-1602.1 of the Tax – General Article;~~

~~(2) Money appropriated in the State budget for the Fund; and~~

~~(3) Any other money from any other source accepted for the benefit of the Fund.~~

Article – Health – General

13-1015.

(a) For fiscal year 2011 and fiscal year 2012, the Governor shall include at least \$6,000,000 in the annual budget in appropriations for activities aimed at reducing tobacco use in Maryland as recommended by the Centers for Disease Control and Prevention, including:

(1) Media campaigns aimed at reducing smoking initiation and encouraging smokers to quit smoking;

- (2) Media campaigns educating the public about the dangers of secondhand smoke exposure;
- (3) Enforcement of existing laws banning the sale or distribution of tobacco products to individuals under the age of 21 years;
- (4) Promotion and implementation of smoking cessation programs; and
- (5) Implementation of school-based tobacco education programs.

(b) **(1)** For fiscal [year 2013 and each fiscal year thereafter,] **YEARS 2013 THROUGH 2021**, the Governor shall include at least \$10,000,000 in the annual budget in appropriations for the purposes described in subsection (a) of this section.

(2) FOR FISCAL YEAR 2022 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE AT LEAST ~~\$21,000,000~~ ~~\$12,500,000~~ \$18,250,000 IN THE ANNUAL BUDGET IN APPROPRIATIONS FOR THE PURPOSES DESCRIBED IN SUBSECTION (A) OF THIS SECTION.

Article – Tax – General

~~2-1303~~

~~(a) After making the distributions required under §§ 2-1301 through 2-1302.1 of this subtitle, the Comptroller shall pay:~~

~~(1) revenues from the hotel surcharge into the Dorchester County Economic Development Fund established under § 10-130 of the Economic Development Article;~~

~~**(2) REVENUES FROM THE SALES AND USE TAX ON OPEN ELECTRONIC SMOKING DEVICES UNDER § 11-104(J) OF THIS ARTICLE TO THE BLUEPRINT FOR MARYLAND'S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION ARTICLE;**~~

~~**[(2)] (3)** subject to subsection (b) of this section, to The Blueprint for Maryland's Future Fund established under § 5-219 of the Education Article, revenues collected and remitted by:~~

~~(i) a marketplace facilitator; or~~

~~(ii) a person that engages in the business of an out-of-state vendor and that is required to collect and remit sales and use tax as specified in COMAR 03.06.01.33B(5); and~~

~~[(3)](4) the remaining sales and use tax revenue into the General Fund of the State.~~

~~2-1602.1.~~

~~AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2-1601 AND 2-1602 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE NET INCREASE IN TOBACCO TAX REVENUE ATTRIBUTABLE TO TOBACCO TAX RATES IN EXCESS OF THE RATES IN EFFECT ON JUNE 30, 2020, TO THE BLUEPRINT FOR MARYLAND'S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION ARTICLE.~~

~~11-104.~~

~~(J) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(II) "ELECTRONIC SMOKING DEVICE" HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~(III) "OPEN ELECTRONIC SMOKING DEVICE" MEANS AN ELECTRONIC SMOKING DEVICE THAT HAS A TANK, RESERVOIR, OR OTHER CONTAINER FOR VAPING LIQUID THAT CAN BE MANUALLY FILLED AND REFILLED WITH VAPING LIQUID.~~

~~(IV) "VAPING LIQUID" HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~(2) THE SALES AND USE TAX RATE FOR OPEN ELECTRONIC SMOKING DEVICES IS 12%.~~

(a) Except as otherwise provided in this section, the sales and use tax rate is:

(1) for a taxable price of less than \$1:

(i) 1 cent if the taxable price is 20 cents;

(ii) 2 cents if the taxable price is at least 21 cents but less than 34 cents;

(iii) 3 cents if the taxable price is at least 34 cents but less than 51 cents;

(iv) 4 cents if the taxable price is at least 51 cents but less than 67 cents;

(v) 5 cents if the taxable price is at least 67 cents but less than 84 cents; and

(vi) 6 cents if the taxable price is at least 84 cents; and

(2) for a taxable price of \$1 or more:

(i) 6 cents for each exact dollar; and

(ii) for that part of a dollar in excess of an exact dollar:

1. 1 cent if the excess over an exact dollar is at least 1 cent but less than 17 cents;

2. 2 cents if the excess over an exact dollar is at least 17 cents but less than 34 cents;

3. 3 cents if the excess over an exact dollar is at least 34 cents but less than 51 cents;

4. 4 cents if the excess over an exact dollar is at least 51 cents but less than 67 cents;

5. 5 cents if the excess over an exact dollar is at least 67 cents but less than 84 cents; and

6. 6 cents if the excess over an exact dollar is at least 84 cents.

(J) (1) (I) IN THIS SUBSECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.

(III) “VAPING LIQUID” HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THE SALES AND USE TAX RATE FOR ELECTRONIC SMOKING DEVICES IS 12% OF THE TAXABLE PRICE.

(3) THE SALES AND USE TAX FOR VAPING LIQUID SOLD IN A CONTAINER THAT CONTAINS 5 MILLILITERS OR LESS OF VAPING LIQUID IS 60% OF THE TAXABLE PRICE.

12-101.

~~(a) In this title the following words have the meanings indicated.~~

~~(b) "Cigarette" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.~~

~~(c) "ELECTRONIC SMOKING DEVICE" HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~(d) "ELECTRONIC SMOKING DEVICES RETAILER" HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~(e) (E) "Manufacturer" means a person who acts as:~~

~~(1) a manufacturer as defined in § 16-201 of the Business Regulation Article [or as];~~

~~(2) an other tobacco products manufacturer as defined in § 16.5-101 of the Business Regulation Article; OR~~

~~(3) AN ELECTRONIC SMOKING DEVICES MANUFACTURER AS DEFINED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~(d) (F) (D) "Other tobacco [product]" means:~~

~~(1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or~~

~~(2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff] PRODUCTS" HAS THE MEANING STATED IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~(e) (G) "Other tobacco products retailer" means a person authorized under § 16.5-205(b) of the Business Regulation Article to purchase other tobacco products on which the tobacco tax has not been paid.~~

~~(f) (H) "Out of state seller" means a person located outside the State that sells, holds for sale, ships, or delivers [premium cigars or pipe tobacco] CIGARETTES, OTHER TOBACCO PRODUCTS, OR ELECTRONIC SMOKING DEVICES CIGARETTES OR OTHER TOBACCO PRODUCTS to consumers in the State if, during the previous calendar year or the current calendar year:~~

~~(1) the person's gross revenue from the sale of [premium cigars or pipe tobacco] CIGARETTES, OTHER TOBACCO PRODUCTS, OR ELECTRONIC SMOKING DEVICES CIGARETTES OR OTHER TOBACCO PRODUCTS in the State exceeds \$100,000;~~
~~or~~

~~(2) the person sold [premium cigars or pipe tobacco] CIGARETTES, OTHER TOBACCO PRODUCTS, OR ELECTRONIC SMOKING DEVICES CIGARETTES OR OTHER TOBACCO PRODUCTS into the State in 200 or more separate transactions.~~

~~[(g) "Pipe tobacco" has the meaning stated in § 16.5-101 of the Business Regulation Article.]~~

~~(h) "Premium cigars" has the meaning stated in § 16.5-101 of the Business Regulation Article.]~~

~~(i) (G) "Sell" means to exchange or transfer, or to make an agreement to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.~~

~~(j) (H) "Tax stamp" means a device in the design and denomination that the Comptroller authorizes by regulation for the purpose of being affixed to a package of cigarettes as evidence that the tobacco tax is paid.~~

~~(k) (I) "Tobacconist" means a person authorized under § 16.5-205(c) of the Business Regulation Article to purchase other tobacco products on which the tobacco tax has not been paid.~~

~~(l) (J) "Unstamped cigarettes" means a package of cigarettes to which tax stamps are not affixed in the amount and manner required in § 12-304 of this title.~~

~~(M) "VAPE SHOP VENDOR" HAS THE MEANING STATED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

~~[(m)] (N) (K) "Wholesale price" means the price for which a wholesaler buys other tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.~~

~~[(n)] (O) (L) "Wholesaler" means, unless the context requires otherwise, a person who acts as:~~

~~(1) a wholesaler as defined in § 16-201 of the Business Regulation Article [or as];~~

~~(2) an other tobacco products wholesaler as defined in § 16.5-101 of the Business Regulation Article;~~

~~(3) AN ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, AS DEFINED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE; OR~~

~~(4) AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER, AS DEFINED IN § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.~~

(a) In this title the following words have the meanings indicated.

(d) “Other tobacco product” [means:

(1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or

(2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff] HAS THE MEANING STATED FOR “OTHER TOBACCO PRODUCTS” IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE.

12-102.

~~[(a) Except as provided in § 12-104 of this subtitle, a tax is imposed on cigarettes [and], other tobacco products, AND ELECTRONIC SMOKING DEVICES in the State.~~

~~[(b) A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose a tax on cigarettes or, other tobacco products.]~~

(a) Except as provided in § 12-104 of this subtitle, a tax is imposed on cigarettes and other tobacco products in the State.

(b) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose a tax on cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES AS DEFINED UNDER § 16.7-101 OF THE BUSINESS REGULATION ARTICLE.

(2) IF A COUNTY IMPOSED A TAX ON ELECTRONIC SMOKING DEVICES ON JANUARY 1, 2020, THE COUNTY MAY CONTINUE TO IMPOSE A TAX ON ELECTRONIC SMOKING DEVICES AT THE SAME RATE THAT WAS IN EFFECT ON JANUARY 1, 2020.

12-105.

(a) The tobacco tax rate for cigarettes is:

(1) [\$1.00 for each package of 10 or fewer cigarettes;

~~(2) \$2.00~~ **\$3.75** for each package of ~~[at least 11 and not more than] 20~~ cigarettes; AND

~~[(3)] (2)~~ ~~[10.0] 17.5~~ cents for each cigarette in a package of more than 20 cigarettes]; and

~~(4)~~ 10.0 cents for each cigarette in a package of free sample cigarettes].

~~(b) (1)~~ Except as provided in paragraph (2) of this subsection, the tobacco tax rate for other tobacco products is ~~[30%] 53%~~ of the wholesale price of the tobacco products.

~~(2) (i)~~ In this paragraph, “premium cigars” has the meaning stated in § 16.5-101 of the Business Regulation Article.

~~(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 15% of the wholesale price of the premium cigars.

~~(b) (1)~~ Except as provided in paragraph (2) of this subsection, the tobacco tax rate for other tobacco products is ~~[30%] 53%~~ of the wholesale price of the tobacco products.

~~(2) (i)~~ In this paragraph, “PIPE TOBACCO” AND “premium cigars” [has] HAVE the [meaning] MEANINGS stated in § 16.5-101 of the Business Regulation Article.

~~(ii) 1.~~ Except as provided in [subparagraph (iii)] SUBSUBPARAGRAPH 2 of this [paragraph] SUBPARAGRAPH, the tobacco tax rate for cigars is 70% of the wholesale price of the cigars.

~~[(iii)] 2.~~ The tobacco tax rate for premium cigars is 15% of the wholesale price of the premium cigars.

~~(iii)~~ THE TOBACCO TAX RATE FOR PIPE TOBACCO IS 30% OF THE WHOLESALE PRICE OF THE PIPE TOBACCO.

~~12-103.~~

~~(a)~~ A rebuttable presumption exists that any cigarette [or], other tobacco product, OR ELECTRONIC SMOKING DEVICE in the State is subject to the tobacco tax.

~~(b)~~ Cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES are contraband tobacco products if they:

~~(1) are possessed or sold in the State in a manner that is not authorized under this title or under Title 16 [or], Title 16.5, OR TITLE 16.7 of the Business Regulation Article; or~~

~~(2) are transported by vehicle in the State by a person who does not have, in the vehicle, the records required by § 16-219 or § 16.5-215 of the Business Regulation Article for the transportation of cigarettes or other tobacco products.~~

~~(e) A person who possesses cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES has the burden of proving that the cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES are not subject to the tobacco tax.~~

~~12-104.~~

~~(a) "Consumer" means a person who possesses cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES for a purpose other than selling or transporting the cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES.~~

~~(b) The tobacco tax does not apply to:~~

~~(1) cigarettes that a licensed wholesaler under Title 16 of the Business Regulation Article is holding for sale outside the State or to a United States armed forces exchange or commissary;~~

~~(2) other tobacco products that an other tobacco products wholesaler licensed under Title 16.5 of the Business Regulation Article is holding for sale outside the State or to a United States armed forces exchange or commissary; [or]~~

~~(3) ELECTRONIC SMOKING DEVICES THAT AN ELECTRONIC SMOKING DEVICES WHOLESALER LICENSED UNDER TITLE 16.7 OF THE BUSINESS REGULATION ARTICLE IS HOLDING FOR SALE OUTSIDE THE STATE OR TO A UNITED STATES ARMED FORCES EXCHANGE OR COMMISSARY; OR~~

~~[(3)] (4) cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES that:~~

~~(i) a consumer brings into the State:~~

~~1. if the quantity brought from another state does not exceed [other tobacco products having] a retail value of \$100 FOR OTHER TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES or 5 cartons of cigarettes; or~~

~~2. if the quantity brought from a United States armed forces installation or reservation does not exceed [other tobacco products having] a retail value of \$100 FOR OTHER TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES or 5 cartons of cigarettes;~~

~~(ii) a person is transporting by vehicle in the State if the person has, in the vehicle, the records required by § 16-219 or § 16.5-215 of the Business Regulation Article for the transportation of cigarettes or other tobacco products; or~~

~~(iii) are held in storage in a licensed storage warehouse on behalf of a licensed cigarette manufacturer [or], an other tobacco products manufacturer, OR AN ELECTRONIC SMOKING DEVICES MANUFACTURER.~~

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

~~Article – Tax – General~~

~~12-105.~~

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

~~(1) [\$1.00 for each package of 10 or fewer cigarettes;~~

~~(2) \$2.00] \$4.00 \$3.00 for each package of [at least 11 and not more than] 20 cigarettes; AND~~

~~[(3)] (2) [10.0] 20.0 15.0 cents for each cigarette in a package of more than 20 cigarettes]; and~~

~~(4) 10.0 cents for each cigarette in a package of free sample cigarettes];~~

~~(b) [(1) Except as provided in paragraph (2) of this subsection, the] THE tobacco tax rate for other tobacco products is [30%] 86% 50% of the wholesale price of the tobacco products.~~

~~[(2) (i) In this paragraph, “premium cigars” has the meaning stated in § 16.5-101 of the Business Regulation Article.~~

~~(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 15% of the wholesale price of the premium cigars.]~~

~~(c) THE TOBACCO TAX RATE FOR ELECTRONIC SMOKING DEVICES IS 86% OF THE WHOLESALE PRICE OF THE ELECTRONIC SMOKING DEVICES.~~

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

~~Article Tax General~~

~~12-105.~~

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

~~(1) \$1.00 for each package of 10 or fewer cigarettes;~~

~~(2) \$2.00 \$4.00 for each package of [at least 11 and not more than] 20 cigarettes; AND~~

~~(3) [10.0] 20.0 cents for each cigarette in a package of more than 20 cigarettes]; and~~

~~(4) 10.0 cents for each cigarette in a package of free sample cigarettes];~~

~~(b) (1) Except as provided in paragraph (2) of this subsection, the tobacco tax rate for other tobacco products is [30%] 70% of the wholesale price of the tobacco products.~~

~~(2) (i) In this paragraph, "premium cigars" has the meaning stated in § 16.5-101 of the Business Regulation Article.~~

~~(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 15% of the wholesale price of the premium cigars.~~

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

~~Article Tax General~~

~~12-201.~~

~~(a) A manufacturer shall complete and file with the Comptroller a tobacco tax return];~~

~~(1) on or before the 15th day of the month that follows the month in which the manufacturer distributes in the State free sample cigarettes of the manufacturer; and~~

~~(2) ON A DATE if the Comptroller so specifies, by regulation, on other dates for each month in which the manufacturer does not distribute any sample cigarettes.~~

~~(b) A licensed other tobacco products manufacturer AND A LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER shall file the information return that the Comptroller requires.~~

~~(e) A licensed storage warehouse operator and a licensed other tobacco products storage warehouse operator shall file the information return that the Comptroller requires.~~

~~12-202.~~

~~(a) A wholesaler shall complete and file with the Comptroller a tobacco tax return:~~

~~(1) for cigarettes:~~

~~(i) on or before the 21st day of the month that follows the month in which the wholesaler has the first possession, in the State, of unstamped cigarettes for which tax stamps are required; and~~

~~(ii) if the Comptroller so specifies, by regulation, on other dates for each month in which the wholesaler does not have the first possession of any unstamped cigarettes in the State; [and]~~

~~(2) for other tobacco products, on or before the 21st day of the month that follows the month in which the wholesaler has possession of other tobacco products on which the tobacco tax has not been paid; AND~~

~~(3) FOR ELECTRONIC SMOKING DEVICES, ON OR BEFORE THE 21ST DAY OF THE MONTH THAT FOLLOWS THE MONTH IN WHICH THE WHOLESALER HAS POSSESSION OF ELECTRONIC SMOKING DEVICES ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID.~~

~~(b) Each return shall state the quantity of cigarettes or the wholesale price of other tobacco products sold during the period that the return covers.~~

~~12-203.~~

~~(a) Each wholesaler shall:~~

~~(1) keep an invoice for each purchase of tax stamps;~~

~~(2) maintain a daily record of the tax stamps affixed to cigarette packages;~~

~~and~~

~~(3) maintain a complete and accurate record of each sale of cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES for resale outside of the State.~~

~~(b) A wholesaler shall:~~

~~(1) keep the records required under subsection (a) of this section for a period of 6 years or for a shorter period that the Comptroller authorizes; and~~

~~(2) allow the Comptroller to examine the records.~~

~~12-301.~~

~~In this subtitle, "licensed wholesaler" means a wholesaler who is licensed under:~~

~~(1) Title 16, Subtitle 2 of the Business Regulation Article to act as a wholesaler [or under];~~

~~(2) Title 16.5, Subtitle 2 of the Business Regulation Article to act as an other tobacco products wholesaler;~~

~~(3) TITLE 16.7, SUBTITLE 2 OF THE BUSINESS REGULATION ARTICLE AS AN ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR; OR~~

~~(4) TITLE 16.7, SUBTITLE 2 OF THE BUSINESS REGULATION ARTICLE AS AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER.~~

~~12-302.~~

~~(a) A manufacturer of sample cigarettes shall pay the tobacco tax on those cigarettes distributed in the State without charge, in the manner that the Comptroller requires by regulation, with the return that covers the period in which the manufacturer distributed those cigarettes.~~

~~(b) The wholesaler who first possesses in the State unstamped cigarettes for which tax stamps are required shall pay the tobacco tax on those cigarettes by buying and affixing tax stamps.~~

~~(c) The tobacco tax on other tobacco products shall be paid by the wholesaler who sells the other tobacco products to a retailer in the State.~~

~~(d) (1) A licensed other tobacco products retailer or a licensed tobacconist shall pay the tobacco tax on other tobacco products on which the tobacco tax has not been paid by filing a quarterly tax return, with any supporting schedules, on forms provided by the Comptroller on the following dates covering tax liabilities in the preceding quarter:~~

- ~~(i) January 21;~~
- ~~(ii) April 21;~~
- ~~(iii) July 21; and~~
- ~~(iv) October 21.~~

~~(2) A licensed other tobacco products retailer or a licensed tobacconist required to file a tax return under paragraph (1) of this subsection shall pay a tobacco tax at the rate provided in § 12-105(b) of this title based on the invoice amount charged by the licensed other tobacco products manufacturer, exclusive of any discount, trade allowance, rebate, or other reduction.~~

~~(c) An out-of-state seller shall pay the tobacco tax on [pipe tobacco or premium cigars] CIGARETTES, OTHER TOBACCO PRODUCTS, AND ELECTRONIC SMOKING DEVICES CIGARETTES OR OTHER TOBACCO PRODUCTS on which the tobacco tax has not been paid.~~

Article – Education

5-219.

(b) There is The Blueprint for Maryland’s Future Fund.

(f) The Fund consists of:

(1) Revenue distributed to the Fund under §§ ~~2-4A-02~~, 2-605.1, and 2-1303 of the Tax – General Article;

(2) Money appropriated in the State budget for the Fund; and

(3) Any other money from any other source accepted for the benefit of the Fund.

Article – Tax – General

1-101.

(a) In this article the following words have the meanings indicated.

(G-1) “DIGITAL ADVERTISING GROSS REVENUES TAX” MEANS THE TAX IMPOSED UNDER TITLE 7.5 OF THIS ARTICLE.

(p) (1) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(2) "Person", unless expressly provided otherwise, does not include a governmental entity or a unit or instrumentality of a governmental entity.

2-102.

In addition to the duties set forth elsewhere in this article and in other articles of the Code, the Comptroller shall administer the laws that relate to:

(1) the admissions and amusement tax;

(2) the alcoholic beverage tax;

(3) the boxing and wrestling tax;

(4) **THE DIGITAL ADVERTISING GROSS REVENUES TAX;**

(5) the income tax;

[(5)] (6) the Maryland estate tax;

[(6)] (7) the Maryland generation-skipping transfer tax;

[(7)] (8) the motor carrier tax;

[(8)] (9) the motor fuel tax;

[(9)] (10) the sales and use tax;

[(10)] (11) the savings and loan association franchise tax; and

[(11)] (12) the tobacco tax.

**SUBTITLE 4A. DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE
DISTRIBUTION.**

2-4A-01.

FROM THE DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE, THE COMPTROLLER SHALL DISTRIBUTE EACH QUARTER THE AMOUNT NECESSARY TO ADMINISTER THE DIGITAL ADVERTISING GROSS REVENUES TAX LAWS IN THE PREVIOUS QUARTER TO AN ADMINISTRATIVE COST ACCOUNT.

2-4A-02.

AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2-4A-01 OF THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE REMAINING DIGITAL ADVERTISING GROSS REVENUES TAX REVENUE TO THE BLUEPRINT FOR MARYLAND'S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION ARTICLE.

TITLE 7.5. DIGITAL ADVERTISING GROSS REVENUES TAX.
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

7.5-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ANNUAL GROSS REVENUES" MEANS INCOME OR REVENUE FROM ALL SOURCES, BEFORE ANY EXPENSES OR TAXES, COMPUTED ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(C) "ASSESSABLE BASE" MEANS THE ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

(D) "DIGITAL ADVERTISING SERVICES" INCLUDES ADVERTISEMENT SERVICES ON A DIGITAL INTERFACE, INCLUDING ADVERTISEMENTS IN THE FORM OF BANNER ADVERTISING, SEARCH ENGINE ADVERTISING, INTERSTITIAL ADVERTISING, AND OTHER COMPARABLE ADVERTISING SERVICES.

(E) "DIGITAL INTERFACE" MEANS ANY TYPE OF SOFTWARE, INCLUDING A WEBSITE, PART OF A WEBSITE, OR APPLICATION, THAT A USER IS ABLE TO ACCESS.

(F) "USER" MEANS AN INDIVIDUAL OR ANY OTHER PERSON WHO ACCESSES A DIGITAL INTERFACE WITH A DEVICE.

7.5-102.

(A) A TAX IS IMPOSED ON ANNUAL GROSS REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

(B) (1) FOR PURPOSES OF THIS TITLE, THE PART OF THE ANNUAL GROSS REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE SHALL BE DETERMINED USING AN APPORTIONMENT FRACTION:

(I) THE NUMERATOR OF WHICH IS THE ANNUAL GROSS REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE; AND

(II) THE DENOMINATOR OF WHICH IS THE ANNUAL GROSS REVENUES OF A PERSON DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE UNITED STATES.

(2) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT DETERMINE THE STATE FROM WHICH REVENUES FROM DIGITAL ADVERTISING SERVICES ARE DERIVED.

7.5-103.

THE DIGITAL ADVERTISING GROSS REVENUES TAX RATE IS:

(1) 2.5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES OF \$100,000,000 THROUGH \$1,000,000,000;

(2) 5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES OF \$1,000,000,001 THROUGH \$5,000,000,000;

(3) 7.5% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES OF \$5,000,000,001 THROUGH \$15,000,000,000; AND

(4) 10% OF THE ASSESSABLE BASE FOR A PERSON WITH GLOBAL ANNUAL GROSS REVENUES EXCEEDING \$15,000,000,000.

SUBTITLE 2. RETURNS.

7.5-201.

(A) EACH PERSON THAT, IN A CALENDAR YEAR, HAS ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE OF AT LEAST \$1,000,000 SHALL COMPLETE, UNDER OATH, AND FILE WITH THE COMPTROLLER A RETURN, ON OR BEFORE APRIL 15 THE NEXT YEAR.

(B) (1) EACH PERSON THAT REASONABLY EXPECTS THE PERSON'S ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE TO EXCEED \$1,000,000 SHALL COMPLETE, UNDER OATH, AND FILE WITH THE COMPTROLLER A DECLARATION OF ESTIMATED TAX, ON OR BEFORE APRIL 15 OF THAT YEAR.

(2) A PERSON REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO FILE A DECLARATION OF ESTIMATED TAX FOR A TAXABLE YEAR SHALL COMPLETE AND FILE WITH THE COMPTROLLER A QUARTERLY ESTIMATED TAX RETURN ON OR BEFORE JUNE 15, SEPTEMBER 15, AND DECEMBER 15 OF THAT YEAR.

(C) A PERSON REQUIRED TO FILE A RETURN UNDER THIS SECTION SHALL FILE WITH THE RETURN AN ATTACHMENT THAT STATES ANY INFORMATION THAT THE COMPTROLLER REQUIRES TO DETERMINE ANNUAL GROSS REVENUES DERIVED FROM DIGITAL ADVERTISING SERVICES IN THE STATE.

7.5-202.

A PERSON REQUIRED TO FILE A RETURN UNDER § 7.5-201 OF THIS SUBTITLE SHALL MAINTAIN RECORDS OF DIGITAL ADVERTISING SERVICES PROVIDED IN THE STATE AND THE BASIS FOR THE CALCULATION OF THE DIGITAL ADVERTISING GROSS REVENUES TAX OWED.

SUBTITLE 3. TAX PAYMENT.

7.5-301.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, EACH PERSON REQUIRED TO FILE A RETURN UNDER § 7.5-201 OF THIS TITLE SHALL PAY THE DIGITAL ADVERTISING GROSS REVENUES TAX WITH THE RETURN THAT COVERS THE PERIOD FOR WHICH THE TAX IS DUE.

(B) A PERSON REQUIRED TO FILE ESTIMATED DIGITAL ADVERTISING GROSS REVENUES TAX RETURNS UNDER § 7.5-201(B) OF THIS TITLE SHALL PAY:

(1) AT LEAST 25% OF THE ESTIMATED DIGITAL ADVERTISING GROSS REVENUES TAX SHOWN ON THE DECLARATION OR AMENDED DECLARATION FOR A TAXABLE YEAR:

(I) WITH THE DECLARATION OR AMENDED DECLARATION THAT COVERS THE YEAR; AND

(II) WITH EACH QUARTERLY RETURN FOR THAT YEAR; AND

(2) ANY UNPAID DIGITAL ADVERTISING GROSS REVENUES TAX FOR THE YEAR SHOWN ON THE PERSON'S RETURN THAT COVERS THAT YEAR WITH THE RETURN.

13-402.

(a) If a notice and demand for a return is made under § 13-303 of this title and the person or governmental unit fails to file the return, the tax collector shall:

(4) for motor carrier tax:

(i) compute the tax by using a miles per gallon factor based on the use, in the State, of 40 gallons of motor fuel for each commercial motor vehicle in the person's fleet on each day during the period for which the return is not filed; and

(ii) assess the tax due; [and]

(5) for public service company franchise tax:

(i) estimate gross receipts from the best information in the possession of the tax collector; and

(ii) assess the tax due on the estimated gross receipts; AND

(6) FOR DIGITAL ADVERTISING GROSS REVENUES TAX:

(I) ESTIMATE GROSS REVENUES FROM THE BEST INFORMATION IN POSSESSION OF THE TAX COLLECTOR; AND

(II) ASSESS THE TAX DUE ON THE ESTIMATED ASSESSABLE BASE.

13-602.

(a) Except as provided in subsections (b) and (c) of this section, a tax collector shall assess interest on unpaid tax from the due date to the date on which the tax is paid if a person who is required to estimate and pay **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial institution franchise tax, public service company franchise tax, or income tax under **§ 7.5-301**, § 8-210(b), § 8-405(b), or § 10-902 of this article:

(1) fails to pay an installment when due; or

(2) estimates a tax that is:

(i) less than 90% of the tax required to be shown on the return for the current taxable year; and

(ii) less than 110% of the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703 of this article.

13-702.

(a) Except as provided in subsections (b) and (c) of this section, a tax collector shall assess a penalty not exceeding 25% of the amount underestimated, if a person who is required to estimate and pay **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial institution franchise tax, public service company franchise tax, or income tax under **§ 7.5-301**, **§ 8-210(b)**, **§ 8-405(b)**, or **§ 10-902** of this article:

(1) fails to pay an installment when due; or

(2) estimates a tax that is:

(i) less than 90% of the tax required to be shown on the return for the current taxable year; and

(ii) less than 110% of the tax paid for the prior taxable year, reduced by the credit allowed under **§ 10-703** of this article.

13-1001.

(G) A PERSON WHO IS REQUIRED TO FILE A DIGITAL ADVERTISING GROSS REVENUES TAX RETURN AND WHO WILLFULLY FAILS TO FILE THE RETURN AS REQUIRED UNDER TITLE 7.5 OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

13-1002.

(b) A person, including an officer of a corporation, who willfully files **A FALSE DIGITAL ADVERTISING GROSS REVENUES TAX RETURN**, a false financial institution franchise tax return, a false public service company franchise tax return, or a false income tax return with the intent to evade the payment of tax due under this article is guilty of perjury and, on conviction, is subject to the penalty for perjury.

(c) Subsections (a) and (b) of this section apply to the alcoholic beverage, **DIGITAL ADVERTISING GROSS REVENUES**, financial institution franchise, public service company franchise, and income taxes.

13-1101.

(b) An assessment of **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial institution franchise tax, public service company franchise tax, income tax, or estate tax may be made at any time if:

(1) a false return is filed with the intent to evade the tax;

(2) a willful attempt is made to evade the tax;

(3) a return is not filed as required under Title 7, **TITLE 7.5**, Title 8, or Title 10 of this article;

(4) an amended estate tax return is not filed as required under Title 7 of this article;

(5) an incomplete return is filed; or

(6) a report of federal adjustment is not filed within the period required under § 13-409 of this title.

(c) If a report of federal adjustment is filed within the time required under § 13-409 of this title, the tax collector shall assess the **DIGITAL ADVERTISING GROSS REVENUES TAX**, financial institution franchise tax, public service company franchise tax, income tax, or estate tax within 1 year after the date on which the tax collector receives the report.

~~(F) THE TOBACCO TAX ON ELECTRONIC SMOKING DEVICES SHALL BE PAID BY THE WHOLESALER THAT SELLS ELECTRONIC SMOKING DEVICES TO A RETAILER OR VAPE SHOP VENDOR IN THE STATE.~~

~~(G) (1) A LICENSED ELECTRONIC SMOKING DEVICES RETAILER OR A LICENSED VAPE SHOP VENDOR SHALL PAY THE TOBACCO TAX ON ELECTRONIC SMOKING DEVICES ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID BY FILING A QUARTERLY TAX RETURN, WITH ANY SUPPORTING SCHEDULES, ON FORMS PROVIDED BY THE COMPTROLLER ON THE FOLLOWING DATES COVERING TAX LIABILITIES IN THE PRECEDING QUARTER:~~

~~(I) JANUARY 21;~~

~~(II) APRIL 21;~~

~~(III) JULY 21; AND~~

~~(IV) OCTOBER 21.~~

~~(2) A LICENSED ELECTRONIC SMOKING DEVICES RETAILER OR A LICENSED VAPE SHOP VENDOR REQUIRED TO FILE A TAX RETURN UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PAY A TOBACCO TAX AT THE RATE PROVIDED IN § 12-105(C) OF THIS TITLE BASED ON THE INVOICE AMOUNT CHARGED BY THE LICENSED ELECTRONIC SMOKING DEVICES MANUFACTURER, EXCLUSIVE OF ANY DISCOUNT, TRADE ALLOWANCE, REBATE, OR OTHER REDUCTION.~~

~~(a) If the Comptroller determines that a person has failed to keep the records of out-of-state cigarette [or], other tobacco product, OR ELECTRONIC SMOKING DEVICE sales required under § 12-203 of this article, the Comptroller shall:~~

~~(1) compute the tobacco tax as if the cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES were sold in the State; and~~

~~(2) assess the tax due.~~

~~(b) If the Comptroller determines that a person has possessed or transported cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES on which the tobacco tax has not been paid as required under Title 12 of this article, the Comptroller shall assess the tobacco tax due.~~

~~13-825.~~

~~(h) (1) The Comptroller may require a person subject to the tobacco tax to post security for the tax in the following amounts:~~

~~(i) for a manufacturer or wholesaler:~~

~~1. \$10,000[.]; plus~~

~~2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$10,000;~~

~~(ii) for a subwholesaler or vending machine operator:~~

~~1. \$1,000[.]; plus~~

~~2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$1,000; [and]~~

~~(iii) for an other tobacco products wholesaler:~~

~~1. \$5,000[.]; plus~~

~~2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$5,000; AND~~

~~(IV) FOR AN ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR OR AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER:~~

~~1. \$5,000; PLUS~~

~~2. THE AMOUNT, IF ANY, BY WHICH THE TOBACCO TAX DUE FOR ANY 1 MONTH EXCEEDS \$5,000.~~

~~(2) Except as provided in paragraph (5) of this subsection, the Comptroller may exempt a person from posting security for the tobacco tax if the person is and has been for the past 5 years:~~

~~(i) licensed as required under § 16-202 of the Business Regulation Article to act as a wholesaler [or], § 16.5-201 to act as an other tobacco products wholesaler, § 16.7-201 TO ACT AS AN ELECTRONIC SMOKING DEVICES WHOLESALER DISTRIBUTOR, OR § 16.7-201 TO ACT AS AN ELECTRONIC SMOKING DEVICES WHOLESALER IMPORTER; and~~

~~(ii) 1. in continuous compliance with the tobacco tax laws, as determined under paragraph (3) of this subsection; and~~

~~2. in continuous compliance with the conditions of the person's security posted under this subsection.~~

~~(3) For purposes of paragraph (2) of this subsection, a person is in continuous compliance with the tobacco tax laws for a period if the person has not, at any time during that period:~~

~~(i) failed to pay any tobacco tax or any tobacco tax assessment when due;~~

~~(ii) failed to file a tobacco tax return when due; or~~

~~(iii) otherwise violated any of the provisions of this title, Title 12 of this article, or Title 16 [or], Title 16.5, OR TITLE 16.7 of the Business Regulation Article.~~

~~(4) (i) An exemption granted under paragraph (2) of this subsection is effective only to the extent that a person's potential tobacco tax liability does not exceed an amount determined by the Comptroller based on the person's experience during the 5-year compliance period under paragraph (2) of this subsection.~~

~~(ii) The Comptroller may revoke an exemption granted to a person under paragraph (2) of this subsection if the person at any time fails to be in continuous compliance with the tobacco tax laws, as described in paragraph (3) of this subsection.~~

~~(iii) The Comptroller may reinstate an exemption revoked under subparagraph (ii) of this paragraph if the person meets the requirements of paragraph (2)(i) and (ii) of this subsection for a period of 2 years following the revocation.~~

~~(5) The Comptroller may not exempt a person from posting a bond or other security for the tobacco tax unless the Comptroller determines that the person is solvent and financially able to pay the person's potential tobacco tax liability.~~

~~(6) If a corporation is granted an exemption from posting a bond or other security for the tobacco tax, any officer of the corporation who exercises direct control over its fiscal management is personally liable for any tobacco tax, interest and penalties owed by the corporation.~~

~~13-834.~~

~~(a) In this Part VI of this subtitle the following words have the meanings indicated.~~

~~(e) "Contraband tobacco products" means cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES, as defined in § 12-101 of this article:~~

~~(1) on which tobacco tax is not paid; and~~

~~(2) that are delivered, possessed, sold, or transported in the State in a manner not authorized under Title 12 of this article or Title 16, TITLE 16.5, OR TITLE 16.7 of the Business Regulation Article.~~

~~13-836.~~

~~(a) (1) If contraband alcoholic beverages or contraband tobacco products are seized:~~

~~(i) the Comptroller or police officer shall give a notice of seizure to the person from whom the property is seized at the time of the seizure; and~~

~~(ii) the Comptroller shall:~~

~~1. where possible, give a notice of seizure to the registered owner of a seized conveyance; and~~

~~2. publish a notice of seizure of the conveyance in a newspaper of general circulation in the county where the seizure occurred.~~

~~(b) (2) A police officer who seizes any contraband tobacco products or conveyance used to transport contraband tobacco products shall deliver the seized cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES and conveyance to the Comptroller.~~

~~13-837.~~

~~The owner or another person with an interest in seized property may file a claim for the return of the property with the Comptroller within 30 days after:~~

~~(1) the seizure of alcoholic beverages, cigarettes, other tobacco products, **ELECTRONIC SMOKING DEVICES**, OR motor fuel or conveyances used to transport motor fuel; or~~

~~(2) a notice of seizure of a conveyance used to transport alcoholic beverages, cigarettes, [or] other tobacco products, **OR ELECTRONIC SMOKING DEVICES** is published.~~

~~13-839.~~

~~(a) If a person files a claim for return of seized alcoholic beverages, cigarettes, other tobacco products, **ELECTRONIC SMOKING DEVICES**, or a conveyance used for their transportation under § 13-837 of this subtitle, the Comptroller or the Comptroller's designee shall:~~

~~(1) promptly act on the request and hold an informal hearing;~~

~~(2) direct the return of alcoholic beverages, cigarettes, [or] other tobacco products, **OR ELECTRONIC SMOKING DEVICES** unless the Comptroller or Comptroller's designee has satisfactory proof that the person was not in compliance with any provisions of Title 5 or Title 12 of this article at the time of seizure; and~~

~~(3) direct the return of the conveyance if the Comptroller or Comptroller's designee has satisfactory proof that the owner of the conveyance was not willfully evading any provisions of Title 5 or Title 12 of this article at the time of seizure.~~

~~(b) The Comptroller or Comptroller's designee shall grant or deny the application for return of seized alcoholic beverages, cigarettes, other tobacco products, **ELECTRONIC SMOKING DEVICES**, or a conveyance in accordance with subsection (a) of this section by mailing the person a notice of final determination.~~

~~13-1014.~~

~~(a) (1) A person who willfully possesses, sells, or attempts to sell unstamped or improperly stamped cigarettes in the State in violation of Title 12 of this article is guilty of a misdemeanor.~~

~~(2) If the number of unstamped or improperly stamped cigarettes that a person possesses, sells, or attempts to sell is 30 cartons or less, the person on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 3 months or both.~~

~~(3) If the number of unstamped or improperly stamped cigarettes that a person possesses, sells, or attempts to sell is more than 30 cartons, the person on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.~~

~~(b) A person who willfully possesses, sells, or attempts to sell other tobacco products on which the tobacco tax has not been paid in the State in violation of Title 12 of this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 3 months or both.~~

~~(C) A PERSON WHO WILLFULLY POSSESSES, SELLS, OR ATTEMPTS TO SELL ELECTRONIC SMOKING DEVICES ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID IN THE STATE IN VIOLATION OF TITLE 12 OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 3 MONTHS OR BOTH.~~

~~[(e)] (D) Each day that a violation under this section continues constitutes a separate offense.~~

~~13-1015.~~

~~(a) A person who willfully ships, imports, sells into or within, or transports within, this State cigarettes [or], other tobacco products, OR ELECTRONIC SMOKING DEVICES on which the tobacco tax has not been paid in violation of Title 12 of this article or § 16-219, § 16-222, § 16.5-215, or § 16.5-216 of the Business Regulation Article is guilty of a felony and, on conviction, is subject to the penalties set forth in subsections (b) and (c) of this section.~~

~~(b) (1) For a first violation, a person is subject to a mandatory fine of \$150 for each carton of cigarettes [or], each package of other tobacco products, OR EACH PACKAGE OF ELECTRONIC SMOKING DEVICES transported.~~

~~(2) For each subsequent violation, a person is subject to a mandatory fine of \$300 for each carton of cigarettes [or], each package of other tobacco products, OR EACH PACKAGE OF ELECTRONIC SMOKING DEVICES transported.~~

~~(c) In addition to the mandatory fine set forth in subsection (b) of this section, for a first or subsequent violation, a person may be subject to imprisonment not exceeding 2 years.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

~~(a) As provided in § 12-105 of the Tax General Article, as enacted by Section 1 of this Act, all electronic smoking devices used, possessed, or held in the State on or after July 1, 2020, by any person for sale or use in the State shall be subject to the tax on electronic smoking devices, as enacted by this Act.~~

~~(b) The Comptroller may provide an alternative method of assessing and collecting the additional tax.~~

~~(e) The revenue attributable to this requirement shall be remitted to the Comptroller no later than September 30, 2020.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.~~

~~SECTION 5. AND BE IT FURTHER ENACTED, That:~~

~~(a) As provided in § 12-105 of the Tax — General Article, as enacted by Section 2 of this Act, all cigarettes and other tobacco products used, possessed, or held in the State on or after July 1, 2020, by a wholesaler for sale in the State shall be subject to the tax on cigarettes and other tobacco products as enacted by Section 2 of this Act. The revenue attributable to this requirement shall be remitted to the Comptroller not later than September 30, 2020.~~

~~(b) As provided in § 12-105 of the Tax — General Article, as enacted by Section 3 of this Act, all cigarettes and other tobacco products used, possessed, or held in the State on or after July 1, 2021, by a wholesaler for sale in the State shall be subject to the tax on cigarettes and other tobacco products as enacted by Section 3 of this Act. The revenue attributable to this requirement shall be remitted to the Comptroller not later than September 30, 2021.~~

~~(c) The Comptroller may provide an alternative method of assessing and collecting the additional tax due under this section.~~

~~SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2021.~~

~~SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in Section 6 of this Act, this Act shall take effect July 1, 2020. Section 2 of this Act shall remain effective for a period of 1 year and, at the end of June 30, 2021, Section 2 of this Act shall be abrogated and of no further force and effect.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That:~~

~~(1) as provided in § 12-105 of the Tax — General Article, as enacted by Section 1 of this Act, all cigarettes and other tobacco products used, possessed, or held in the State on or after July 1, 2020, by any person for sale or use in the State shall be subject to the tax on cigarettes and other tobacco products as enacted under Section 1 of this Act;~~

~~(2) the Comptroller may provide an alternative method of assessing and collecting the additional tax; and~~

~~(3) the revenue attributable to this requirement shall be remitted to the Comptroller no later than September 30, 2020.~~

SECTION 4. AND BE IT FURTHER ENACTED, That on or before December 31, 2020, the Comptroller's Office shall report to the Senate Budget and Taxation Committee and the House Committee on Ways and Means, in accordance with § 2-1257 of the State Government Article, on the change in consumption of cigarettes, other tobacco products, and electronic smoking devices in the State over the immediately preceding 12 months.

SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Comptroller distribute, as necessary, the sales and use tax and tobacco tax collected in fiscal year 2021 under Section 1 of this Act to:

(1) the expenditure accounts of the appropriate units of State government to fund costs associated with the Coronavirus Disease 2019 (COVID-19); and

(2) the Revenue Stabilization Account established under § 7-311 of the State Finance and Procurement Article.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act ~~shall take effect July 1, 2021, and~~ shall be applicable to all taxable years beginning after December 31, 2020.

SECTION 7. AND BE IT FURTHER ENACTED, That, ~~except as provided in Section 6 of this Act,~~ this Act shall take effect July 1, 2020.

Gubernatorial Veto Override, February 12, 2021.