

SB0002/839438/1

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL 2
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “Taxation – Tobacco Tax, Sales and Use Tax, Income Tax, and Digital Advertising Gross Revenues Tax”; in line 3, after “of” insert “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 certain fiscal years, to include in the annual budget bill an appropriation for certain activities; altering the definition of “electronic smoking device” to exclude certain batteries or battery chargers; 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;”; strike beginning with “establishing” in line 4 down through “circumstances;” in line 5 and substitute “providing for the calculation of the part of the annual gross revenues of a person derived from digital advertising services in the State;”; in line 15, after “manner;” insert “requiring certain retail trade and food services corporations to compute Maryland taxable income using a certain method; authorizing certain retail trade and food services corporations, subject to regulations adopted by the Comptroller, to determine certain income using a certain method; requiring, subject to regulations adopted by the Comptroller, certain groups of retail trade services corporations to file a combined income tax return reflecting the aggregate income tax liability of all members of the group; requiring the Comptroller to adopt certain regulations that are consistent with certain regulations adopted by the Multistate Tax Commission;”; in line 20, after “tax;” insert “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”

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certain additional taxes to be remitted to the Comptroller by a certain date; requiring the Governor, for certain fiscal years, to include in the annual budget bill certain appropriations;”; in line 21, after “terms;” insert “altering the definition of certain terms;”; in line 22, strike “a tax on digital advertising gross revenues” and substitute “the tobacco tax, sales and use tax, income tax, and a digital advertising gross revenue tax”;

and after line 22, insert:

“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

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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 10–402.1, 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, 2–613.1, 2–614, 10–811, 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)”.

On page 2, strike in their entirety lines 4 through 22, inclusive.

AMENDMENT NO. 2

On page 2, after line 24, insert:

“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

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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

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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:

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- (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 – Health – General

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(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 \$18,250,000 IN THE ANNUAL BUDGET IN APPROPRIATIONS FOR THE PURPOSES DESCRIBED IN SUBSECTION (A) OF THIS SECTION.**

Article – Tax – General

11-104.

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

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

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- (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;

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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.

(d) “Other tobacco product” [means:

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(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 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] \$3.50 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].

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(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.

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

AMENDMENT NO. 3

On page 4, after line 11, insert:

“2–613.1.

After making the distribution required under § 2–613 of this subtitle, of the remaining income tax revenue from corporations, the Comptroller shall distribute:

(1) [6%] **5.5%** to the Higher Education Investment Fund established under § 15–106.6 of the Education Article; and

(2) [9.15% to the General Fund] **4.0% TO THE BLUEPRINT FOR MARYLAND’S FUTURE FUND ESTABLISHED UNDER § 5–219 OF THE EDUCATION ARTICLE.**

2–614.

(a) [(1) Except as provided in paragraph (2) of this subsection, after] **AFTER** making the distributions required under §§ 2–613 and 2–613.1 of this subtitle, the

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Comptroller shall distribute monthly [17.2%] 15.5% of the remaining income tax revenue from corporations to a special fund to be distributed as provided in subsection (b) of this section.

[(2) The percent of the remaining income tax revenue from corporations distributed to a special fund to be distributed as provided in subsection (b) of this section shall be:

- (i) 24% for the fiscal year beginning July 1, 2011;
- (ii) 9.5% for the fiscal year beginning July 1, 2012; and
- (iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.]

(b) (1) [(i) Except as provided in subparagraph (ii) of this paragraph, from] FROM the special fund, the Comptroller shall distribute an amount equal to [17.2%] 15.5% of the cost to administer the income tax on corporations to an administrative cost account.

[(ii) The percent of the cost to administer the income tax on corporations that is distributed to an administrative cost account shall be:

- 1. 24% for the fiscal year beginning July 1, 2011;
- 2. 9.5% for the fiscal year beginning July 1, 2012; and
- 3. 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.]

(2) After making the distribution required under paragraph (1) of this subsection, the Comptroller shall distribute the balance in the special fund to the Gasoline and Motor Vehicle Revenue Account in the Transportation Trust Fund.”.

AMENDMENT NO. 4

On page 5, strike in their entirety lines 3 through 9, inclusive, and substitute:

“(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 THAT REVENUES FROM DIGITAL ADVERTISING SERVICES ARE DERIVED FROM.”.

AMENDMENT NO. 5

On page 2, in line 29, after “2-605.1,” insert “**2-613.1,**”.

On page 7, after line 3, insert:

“10-402.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “COMBINED GROUP” MEANS A GROUP OF CORPORATIONS:

(I) THAT IS ENGAGED IN A UNITARY BUSINESS;

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(II) IN WHICH MORE THAN 50% OF THE VOTING STOCK OF EACH MEMBER IS DIRECTLY OR INDIRECTLY OWNED BY:

1. A COMMON OWNER OR OWNERS, EITHER CORPORATE OR NONCORPORATE; OR

2. ONE OR MORE MEMBER CORPORATIONS OF THE GROUP;

(III) THE MEMBERS OF WHICH ARE:

1. PRIMARILY ENGAGED IN ACTIVITIES THAT, IN ACCORDANCE WITH THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS), UNITED STATES MANUAL, UNITED STATES OFFICE OF MANAGEMENT AND BUDGET, 2017 EDITION, WOULD BE INCLUDED IN SECTOR 44, 45, OR 722; AND

2. SUBJECT TO THE INCOME TAX OR WOULD BE SUBJECT TO THE INCOME TAX IF DOING BUSINESS IN THE STATE; AND

(IV) CONSISTING OF ANY OTHER MEMBERS OF WHICH UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME OF ANY MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.

(3) “COMBINED RETURN” MEANS A TAX RETURN FOR THE COMBINED GROUP CONTAINING INFORMATION AS PROVIDED IN THIS SECTION OR OTHERWISE REQUIRED BY THE COMPTROLLER.

(4) “UNITARY BUSINESS” MEANS A SINGLE ECONOMIC ENTERPRISE THAT IS MADE EITHER OF SEPARATE PARTS OF A SINGLE BUSINESS ENTITY OR OF A COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES THAT ARE SUFFICIENTLY INTERDEPENDENT, INTEGRATED, AND INTERRELATED THROUGH THEIR ACTIVITIES SO AS TO PROVIDE MUTUAL BENEFIT THAT PRODUCES A SHARING OR EXCHANGE OF VALUE AMONG THEM AND A SIGNIFICANT FLOW OF VALUE TO THE SEPARATE PARTS.

(B) THIS SECTION APPLIES ONLY TO A DOMESTIC OR FOREIGN CORPORATION THAT:

(1) IS PRIMARILY ENGAGED IN ACTIVITIES THAT, IN ACCORDANCE WITH THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS), UNITED STATES MANUAL, UNITED STATES OFFICE OF MANAGEMENT AND BUDGET, 2017 EDITION, WOULD BE INCLUDED IN SECTOR 44, 45, OR 722; AND

(2) MAINTAINS MULTIPLE LOCATIONS OF BUSINESS, WHETHER IN THIS STATE OR ANOTHER STATE.

(C) (1) THE TERM “UNITARY BUSINESS” SHALL BE CONSTRUED TO THE BROADEST EXTENT ALLOWED UNDER THE U.S. CONSTITUTION.

(2) A BUSINESS CONDUCTED DIRECTLY OR INDIRECTLY BY ONE CORPORATION IS A UNITARY BUSINESS WITH RESPECT TO THAT PORTION OF A BUSINESS CONDUCTED BY ANOTHER CORPORATION THROUGH ITS DIRECT OR INDIRECT INTEREST IN A PARTNERSHIP IF THE REQUIREMENTS OF SUBSECTION (A)(4) OF THIS SECTION ARE SATISFIED, INCLUDING IF THERE IS SYNERGY AND AN EXCHANGE AND FLOW OF VALUE BETWEEN THE TWO PARTS OF THE BUSINESS AND THE TWO CORPORATIONS ARE MEMBERS OF THE SAME COMMONLY CONTROLLED GROUP.

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(3) A BUSINESS CONDUCTED BY A PARTNERSHIP SHALL BE TREATED AS CONDUCTED BY ITS PARTNERS, WHETHER DIRECTLY HELD OR INDIRECTLY HELD THROUGH A SERIES OF PARTNERSHIPS, TO THE EXTENT OF THE PARTNER'S DISTRIBUTIVE SHARE OF THE PARTNERSHIP'S INCOME, REGARDLESS OF THE PERCENTAGE OF THE PARTNER'S OWNERSHIP INTEREST OR ITS DISTRIBUTIVE OR ANY OTHER SHARE OF PARTNERSHIP INCOME.

(D) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2020, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL FILE A COMBINED RETURN REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.

(2) THE TAXABLE INCOME OF A CORPORATION REQUIRED TO FILE UNDER § 10-811(A)(2) OF THIS TITLE IS EQUAL TO THE COMBINED GROUP'S MARYLAND MODIFIED INCOME AS ADJUSTED UNDER SUBSECTION (E)(3) OF THIS SECTION.

(E) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP EQUALS THE PRODUCT OF:

(I) THE COMBINED GROUP'S APPORTIONABLE MARYLAND MODIFIED INCOME, AS DETERMINED UNDER PARAGRAPH (2) AND ADJUSTED UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND

(II) THE COMBINED GROUP'S MARYLAND APPORTIONMENT FACTOR, AS DETERMINED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

(2) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS PARAGRAPH, THE APPORTIONABLE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP EQUALS THE SUM OF THE CORPORATION'S AND EACH MEMBER'S MARYLAND MODIFIED INCOME.

(II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER § 10-304 OF THIS TITLE.

2. THE INCOME OF EACH MEMBER SHALL BE CALCULATED ON A SEPARATE RETURN BASIS AS IF THE MEMBER WERE NOT CONSOLIDATED FOR FEDERAL INCOME TAX PURPOSES.

(III) 1. FOR ANY MEMBER NOT INCLUDED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE INCOME TO BE INCLUDED IN THE TOTAL INCOME OF THE COMBINED GROUP IS DETERMINED AS PROVIDED UNDER THIS SUBPARAGRAPH.

2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY MAINTAINED.

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3. THE PROFIT AND LOSS STATEMENT SHALL BE ADJUSTED TO CONFORM TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS ADOPTED BY THE UNITED STATES FINANCIAL ACCOUNTING STANDARDS BOARD FOR THE PREPARATION OF THE PROFIT AND LOSS STATEMENTS, EXCEPT AS MODIFIED BY REGULATION.

4. EXCEPT AS OTHERWISE PROVIDED BY REGULATION, THE PROFIT AND LOSS STATEMENT OF EACH MEMBER OF THE COMBINED GROUP, AND THE APPORTIONMENT FACTORS RELATED TO EACH STATEMENT, WHETHER UNITED STATES OR FOREIGN, SHALL BE TRANSLATED INTO THE CURRENCY IN WHICH THE PARENT COMPANY MAINTAINS ITS BOOKS AND RECORDS.

5. INCOME APPORTIONED TO THIS STATE SHALL BE EXPRESSED IN UNITED STATES DOLLARS.

(IV) IF A UNITARY BUSINESS INCLUDES INCOME FROM A PARTNERSHIP, THE INCOME TO BE INCLUDED IN THE TOTAL INCOME OF THE COMBINED GROUP EQUALS THE DIRECT AND INDIRECT DISTRIBUTIVE SHARE OF THE PARTNERSHIP'S UNITARY BUSINESS INCOME ALLOCATED TO ANY MEMBER OF THE COMBINED GROUP.

(3) THE COMBINED GROUP'S APPORTIONABLE MARYLAND MODIFIED INCOME SHALL BE ADJUSTED TO ELIMINATE INTERCOMPANY TRANSACTIONS AS DETERMINED UNDER THE INTERNAL REVENUE CODE.

(4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMBINED GROUP'S MARYLAND APPORTIONMENT FACTOR IS A FRACTION:

1. THE NUMERATOR OF WHICH IS THE SUM OF THE CORPORATION'S AND EACH MEMBER'S MARYLAND FACTORS UNDER § 10-402 OF THIS SUBTITLE; AND

2. THE DENOMINATOR OF WHICH IS THE SUM OF THE CORPORATION'S AND EACH MEMBER'S FACTORS UNDER § 10-402 OF THIS SUBTITLE.

(II) THE APPORTIONMENT FACTORS OF PASS-THROUGH ENTITY MEMBERS ARE INCLUDED IN THE NUMERATOR UNDER SUBPARAGRAPH (I)1 OF THIS PARAGRAPH AND THE DENOMINATOR UNDER SUBPARAGRAPH (I)2 OF THIS PARAGRAPH TO THE EXTENT OF THE CORPORATION'S DIRECT AND INDIRECT DISTRIBUTIVE SHARE OF THAT ENTITY.

(F) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, A CORPORATION THAT IS PART OF A COMBINED GROUP MAY ELECT TO DETERMINE ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO TRADE OR BUSINESS IN THE STATE USING THE WATER'S EDGE METHOD AS DESCRIBED IN THIS SUBSECTION.

(2) UNDER THE WATER'S EDGE METHOD, THE COMBINED GROUP FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS SECTION SHALL INCLUDE ONLY THE FOLLOWING AFFILIATED ENTITIES:

(I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§ 931 THROUGH 935 OF THE INTERNAL REVENUE CODE;

(II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE;

(III) ANY CORPORATION OTHER THAN A BANK, REGARDLESS OF THE PLACE WHERE IT IS INCORPORATED, IF THE AVERAGE OF THE

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CORPORATION'S PROPERTY, PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;

(IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970 AND 971 OF THE INTERNAL REVENUE CODE;

(V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS FROM DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED STATES TO THE EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL REVENUE CODE; AND

(VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR

2. AN AFFILIATED CORPORATION THAT IS A CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL REVENUE CODE.

(3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION, INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME FOR ANY PERIOD.

(G) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION IS EFFECTIVE ONLY IF MADE ON A TIMELY FILED, ORIGINAL RETURN FOR A TAX YEAR BY EVERY MEMBER OF THE UNITARY BUSINESS.

(II) THE COMPTROLLER SHALL DEVELOP REGULATIONS GOVERNING THE IMPACT, IF ANY, ON THE SCOPE OR APPLICATION OF AN ELECTION TO USE THE WATER'S EDGE METHOD, INCLUDING TERMINATION OR DEEMED ELECTION, RESULTING FROM A CHANGE IN THE COMPOSITION OF THE UNITARY BUSINESS, THE COMBINED GROUP, THE TAXPAYER MEMBERS, OR ANY OTHER SIMILAR CHANGE.

(2) AN ELECTION TO USE THE WATER'S EDGE METHOD SHALL CONSTITUTE CONSENT TO THE REASONABLE PRODUCTION OF DOCUMENTS AND TAKING OF DEPOSITIONS IN ACCORDANCE WITH THE MARYLAND RULES.

(3) AT THE DISCRETION OF THE COMPTROLLER, AN ELECTION TO USE THE WATER'S EDGE METHOD MAY BE DISREGARDED IN PART OR IN WHOLE, AND THE INCOME AND APPORTIONMENT FACTORS OF ANY MEMBER OF THE TAXPAYER'S UNITARY GROUP MAY BE INCLUDED IN THE COMBINED REPORT WITHOUT REGARD TO THE PROVISIONS OF THIS SECTION, IF ANY MEMBER OF THE UNITARY GROUP FAILS TO COMPLY WITH ANY PROVISION OF THIS SECTION OR IF A PERSON OTHERWISE NOT INCLUDED IN THE WATER'S EDGE COMBINED GROUP WAS AVAILED OF A SUBSTANTIAL OBJECTIVE OF AVOIDING STATE INCOME TAX.

(4) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS PARAGRAPH, AN ELECTION TO USE THE WATER'S EDGE METHOD IS BINDING FOR AND APPLICABLE TO THE TAXABLE YEAR IN WHICH THE ELECTION IS MADE AND ALL TAXABLE YEARS THEREAFTER FOR A PERIOD OF 10 YEARS.

(II) AN ELECTION TO USE THE WATER'S EDGE METHOD MAY BE WITHDRAWN OR REINSTITUTED AFTER WITHDRAWAL, BEFORE THE EXPIRATION OF THE 10-YEAR PERIOD, ONLY ON WRITTEN REQUEST FOR

(Over)

REASONABLE CAUSE AND ONLY WITH THE WRITTEN PERMISSION OF THE COMPTROLLER.

(III) IF THE COMPTROLLER GRANTS A WITHDRAWAL OF THE ELECTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMPTROLLER SHALL IMPOSE REASONABLE CONDITIONS AS NECESSARY TO PREVENT THE EVASION OF TAX OR TO CLEARLY REFLECT INCOME FOR THE ELECTION PERIOD BEFORE OR AFTER THE WITHDRAWAL.

(IV) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, ON THE EXPIRATION OF THE 10-YEAR PERIOD, A TAXPAYER MAY WITHDRAW FROM THE ELECTION TO USE THE WATER'S EDGE METHOD.

2. THE WITHDRAWAL SHALL BE MADE IN WRITING WITHIN 1 YEAR BEFORE THE EXPIRATION OF THE ELECTION AND IS BINDING FOR A PERIOD OF 10 YEARS, SUBJECT TO THE SAME CONDITIONS AS APPLIED TO THE ORIGINAL ELECTION.

3. IF NO WITHDRAWAL IS PROPERLY MADE UNDER THIS SUBPARAGRAPH, THE ELECTION TO USE THE WATER'S EDGE METHOD SHALL REMAIN IN EFFECT FOR AN ADDITIONAL 10-YEAR PERIOD, SUBJECT TO THE SAME CONDITIONS AS APPLIED TO THE ORIGINAL ELECTION.

(H) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS" (REG. IV.1.(B)) OF THE MODEL GENERAL ALLOCATION

AND APPORTIONMENT REGULATIONS, AS ADOPTED BY THE MULTISTATE TAX COMMISSION.

10-811.

(A) (1) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations [shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL FILE A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.

(2) THE RETURN REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE THE INCOME AND APPORTIONMENT FACTORS DETERMINED UNDER § 10-402.1(E) AND (F) OF THIS TITLE, AND ANY OTHER INFORMATION REQUIRED BY THE COMPTROLLER, FOR ALL MEMBERS OF THE COMBINED GROUP WHEREVER LOCATED OR DOING BUSINESS.

(3) (1) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMBINED RETURN SHALL BE FILED UNDER THE NAME AND FEDERAL EMPLOYER IDENTIFICATION NUMBER OF THE PARENT CORPORATION IF THE PARENT IS A MEMBER OF THE COMBINED GROUP.

(II) IF THERE IS NO PARENT CORPORATION OR IF THE PARENT IS NOT A MEMBER OF THE COMBINED GROUP, THE MEMBERS OF THE COMBINED GROUP SHALL CHOOSE A MEMBER TO FILE THE RETURN.

(III) THE FILING MEMBER UNDER SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH SHALL CONTINUE TO FILE THE COMBINED RETURN UNLESS THE FILING MEMBER IS NO LONGER THE PARENT CORPORATION OR NO LONGER A MEMBER OF THE COMBINED GROUP.

(Over)

(4) THE RETURN SHALL BE SIGNED BY A RESPONSIBLE OFFICER OF THE FILING MEMBER ON BEHALF OF THE COMBINED GROUP MEMBERS.

(5) MEMBERS OF THE COMBINED GROUP ARE JOINTLY AND SEVERALLY LIABLE FOR THE TAX LIABILITY OF THE COMBINED GROUP INCLUDED IN THE COMBINED RETURN.

(B) (1) THE COMPTROLLER MAY, BY REGULATION, REQUIRE THAT THE COMBINED RETURN INCLUDE THE INCOME AND ASSOCIATED APPORTIONMENT FACTORS OF ENTITIES THAT ARE NOT INCLUDED IN THE COMBINED REPORT BUT THAT ARE MEMBERS OF A UNITARY BUSINESS IN ORDER TO REFLECT PROPER APPORTIONMENT OF INCOME OF THE ENTIRE UNITARY BUSINESS.

(2) IF THE COMPTROLLER DETERMINES THAT THE REPORTED INCOME OR LOSS OF A TAXPAYER ENGAGED IN A UNITARY BUSINESS WITH A MEMBER NOT INCLUDED IN THE COMBINED GROUP REPRESENTS AN AVOIDANCE OR EVASION OF TAX, THE COMPTROLLER MAY, ON A CASE-BY-CASE BASIS, REQUIRE THAT ALL OR PART OF THE INCOME AND ASSOCIATED APPORTIONMENT FACTORS OF THE MEMBER BE INCLUDED IN THE TAXPAYER'S COMBINED RETURN.

(3) THE COMPTROLLER MAY REQUIRE:

(1) THE EXCLUSION OF ONE OR MORE FACTORS, THE INCLUSION OF ONE OR MORE ADDITIONAL FACTORS, OR THE EMPLOYMENT OF ANY OTHER METHOD THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS IN THIS STATE; OR

(II) THE EMPLOYMENT OF ANY OTHER METHOD TO EFFECTUATE A PROPER REFLECTION OF THE TOTAL AMOUNT OF INCOME SUBJECT TO APPORTIONMENT AND AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE COMBINED GROUP'S OR ITS MEMBERS' INCOME.

(C) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.”.

AMENDMENT NO. 6

On page 9, after line 15, insert:

“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.

(Over)

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SECTION 5. 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.”;

in line 16, strike “2.” and substitute “6.”; in the same line, after “That” insert “, except as provided in Section 5,”; and in line 17, strike “, and shall be applicable to all taxable years beginning after December 31, 2020”.