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Introduced and read first time: January 27, 1997

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Tax**

3 FOR the purpose of imposing the tobacco tax on certain tobacco products other than
4 cigarettes; prohibiting a political subdivision of the State from imposing a tax on
5 other tobacco products; altering the tobacco tax rate for cigarettes; setting the rate
6 of the tobacco tax for other tobacco products; altering a certain discount provision
7 under the tobacco tax; defining certain terms and altering certain definitions under
8 the tobacco tax law; requiring the Comptroller to establish by regulation a system of
9 administering, collecting, and enforcing the tobacco tax on other tobacco products;
10 making other tobacco products subject to certain enforcement provisions applicable
11 to cigarettes; prohibiting certain acts relating to other tobacco products; imposing
12 certain requirements relating to certain transportation of other tobacco products;
13 providing for the effective dates and application of this Act; and generally relating
14 to the taxation of cigarettes and other tobacco products.

15 BY repealing and reenacting, without amendments,

16 Article - Tax - General

17 Section 12-101(a)

18 Annotated Code of Maryland

19 (1988 Volume and 1996 Supplement)

20 BY adding to

21 Article - Tax - General

22 Section 12-101(b-1) and (e-1), 12-302(c), and 12-306

23 Annotated Code of Maryland

24 (1988 Volume and 1996 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article - Tax - General

27 Section 12-101(f), 12-102 through 12-105, 12-202, 12-203, 12-303(b), 13-408,

28 13-834(c) and (e), 13-835(a), 13-836(a)(1) and (b)(2), 13-837, 13-839,

29 13-841(b), 13-842, 13-1014(a), and 13-1015

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1 Annotated Code of Maryland
2 (1988 Volume and 1996 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Business Regulation
5 Section 16-219
6 Annotated Code of Maryland
7 (1992 Volume and 1996 Supplement)

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

10 **Article - Tax - General**

11 12-101.

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

13 (B-1) "OTHER TOBACCO PRODUCT" MEANS:

14 (1) ANY CIGAR OR ROLL FOR SMOKING, OTHER THAN A CIGARETTE,
15 MADE IN WHOLE OR IN PART OF TOBACCO; OR

16 (2) ANY OTHER TOBACCO OR PRODUCT MADE PRIMARILY FROM
17 TOBACCO, OTHER THAN A CIGARETTE, THAT IS INTENDED FOR CONSUMPTION BY
18 SMOKING OR CHEWING OR AS SNUFF.

19 (E-1) "WHOLESALE PRICE" MEANS THE PRICE FOR WHICH A WHOLESALER
20 SELLS OTHER TOBACCO PRODUCTS TO A RETAILER, EXCLUSIVE OF ANY DISCOUNT,
21 TRADE ALLOWANCE, REBATE, OR OTHER REDUCTION.

22 (f) "Wholesaler" means, unless the context requires otherwise[.]:

23 (1) a person who acts as a wholesaler as defined in § 16-201 of the Business
24 Regulation Article; OR

25 (2) A PERSON WHO:

26 (I) HOLDS OTHER TOBACCO PRODUCTS FOR SALE TO ANOTHER
27 PERSON FOR RESALE; OR

28 (II) SELLS OTHER TOBACCO PRODUCTS TO ANOTHER PERSON FOR
29 RESALE.

30 12-102.

31 (a) Except as provided in § 12-104 of this title, a tax is imposed on cigarettes AND
32 OTHER TOBACCO PRODUCTS in the State.

33 (b) A county, municipal corporation, special taxing district, or other political
34 subdivision of the State may not impose a tax on cigarettes OR OTHER TOBACCO
35 PRODUCTS.

3

1 12-103.

2 (a) A rebuttable presumption exists that any cigarette OR OTHER TOBACCO
3 PRODUCT in the State is subject to the tobacco tax.

4 (b) Cigarettes OR OTHER TOBACCO PRODUCTS are contraband [cigarettes]
5 TOBACCO PRODUCTS if they:

6 (1) are possessed or sold in the State in a manner that is not authorized
7 under this title or under Title 16 of the Business Regulation Article; or

8 (2) are transported by vehicle in the State by a person who does not have, in
9 the vehicle, the records required by § 16-219 of the Business Regulation Article for the
10 transportation of cigarettes OR OTHER TOBACCO PRODUCTS.

11 (c) A person who possesses cigarettes OR OTHER TOBACCO PRODUCTS has the
12 burden of proving that the cigarettes OR OTHER TOBACCO PRODUCTS are not subject to
13 the tobacco tax.

14 12-104.

15 (a) "Consumer" means a person who possesses cigarettes OR OTHER TOBACCO
16 PRODUCTS for a purpose other than selling or transporting the cigarettes OR OTHER
17 TOBACCO PRODUCTS.

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

19 (1) cigarettes that[:

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

23 (2) OTHER TOBACCO PRODUCTS THAT A WHOLESALER IS HOLDING
24 FOR SALE OUTSIDE THE STATE OR TO A UNITED STATES ARMED FORCES EXCHANGE
25 OR COMMISSARY; OR

26 (3) CIGARETTES OR OTHER TOBACCO PRODUCTS THAT:

27 [(2)] (I) a consumer brings into the State:

28 [(i)] 1. if the quantity brought from another state does not exceed:

29 [1.] A. for a nonresident consumer traveling through this
30 State, OTHER TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$25 OR 1 carton OF
31 CIGARETTES; or

32 [2.] B. for any other consumer, OTHER TOBACCO PRODUCTS
33 HAVING A RETAIL VALUE OF \$5 OR 2 packages OF CIGARETTES; or

34 [(ii)] 2. if the quantity brought from a United States armed forces
35 installation or reservation does not exceed:

36 [1.] A. for a consumer who is a member of an armed forces
37 unit or who is entitled by law to make a purchase at an armed forces exchange, OTHER

4
1 TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$50 OR 2 cartons OF CIGARETTES;
2 or

3 [2.] B. for any other consumer, OTHER TOBACCO PRODUCTS
4 HAVING A RETAIL VALUE OF \$5 OR 2 packages OF CIGARETTES that were bought at an
5 armed forces exchange or commissary;

6 [(3)] (II) a person is transporting by vehicle in the State if the person has, in
7 the vehicle, the records required by § 16-219 of the Business Regulation Article for the
8 transportation of cigarettes OR OTHER TOBACCO PRODUCTS; or

9 [(4)] (III) are held in storage in a licensed storage warehouse.

10 12-105.

11 (A) The tobacco tax rate FOR CIGARETTES is:

12 (1) [18] 68 cents for each package of 10 or fewer cigarettes;

13 (2) [36 cents] \$1.36 for each package of at least 11 and not more than 20
14 cigarettes;

15 (3) [1.8] 6.8 cents for each cigarette in a package of more than 20
16 cigarettes; and

17 (4) [1.8] 6.8 cents for each cigarette in a package of free sample cigarettes.

18 (B) THE TOBACCO TAX RATE FOR OTHER TOBACCO PRODUCTS IS 35% OF THE
19 WHOLESALE PRICE OF THE OTHER TOBACCO PRODUCTS.

20 12-202.

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

23 (1) FOR CIGARETTES:

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

27 [(2)] (II) if the Comptroller so specifies, by regulation, on other dates for
28 each month in which the wholesaler does not have the first possession of any unstamped
29 cigarettes in the State; AND

30 (2) FOR OTHER TOBACCO PRODUCTS, ON THE DATES AND FOR THE
31 PERIODS THAT THE COMPTROLLER SPECIFIES BY REGULATION.

32 (b) Each return shall state the quantity of cigarettes OR THE WHOLESALE PRICE
33 OF OTHER TOBACCO PRODUCTS sold during the period that the return covers.

34 12-203.

35 (a) Each wholesaler shall:

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

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

3 (3) maintain a complete and accurate record of each sale of cigarettes OR
4 OTHER TOBACCO PRODUCTS for resale outside of the State.

5 (b) A wholesaler shall:

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

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

9 12-302.

10 (C) (1) THE TOBACCO TAX ON OTHER TOBACCO PRODUCTS SHALL BE PAID
11 BY THE WHOLESALER WHO SELLS THE OTHER TOBACCO PRODUCTS TO A RETAILER
12 OR CONSUMER IN THE STATE.

13 (2) IF A RETAILER OR CONSUMER POSSESSES OTHER TOBACCO
14 PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID, THE
15 RETAILER OR CONSUMER SHALL PAY THE TOBACCO TAX ON THOSE OTHER
16 TOBACCO PRODUCTS.

17 12-303.

18 (b) The Comptroller shall allow a licensed wholesaler a discount of [1.36%]
19 0.36% of the purchase price of tax stamps.

20 12-306.

21 (A) THE COMPTROLLER SHALL ESTABLISH, BY REGULATION, A SYSTEM OF
22 ADMINISTERING, COLLECTING, AND ENFORCING THE TOBACCO TAX ON OTHER
23 TOBACCO PRODUCTS.

24 (B) REGULATIONS ADOPTED UNDER THIS SECTION MAY INCLUDE:

25 (1) SELF-ASSESSMENT, FILING OF RETURNS, AND MAINTENANCE AND
26 RETENTION OF RECORDS BY WHOLESALERS OR RETAILERS;

27 (2) PAYMENT OF THE TAX BY:

28 (I) A WHOLESALER WHO SELLS OTHER TOBACCO PRODUCTS TO A
29 RETAILER OR CONSUMER IN THE STATE; OR

30 (II) A RETAILER OR CONSUMER WHO POSSESSES OTHER TOBACCO
31 PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID; AND

32 (3) ANY OTHER PROVISION THAT THE COMPTROLLER CONSIDERS
33 NECESSARY TO EFFICIENTLY AND ECONOMICALLY ADMINISTER, COLLECT, AND
34 ENFORCE THE TAX.

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1 13-408.

2 (a) If the Comptroller determines that a person has failed to keep the records of
3 out-of-state cigarette OR OTHER TOBACCO PRODUCT sales required under § 12-203 of
4 this article, the Comptroller shall:

5 (1) compute the tobacco tax as if the cigarettes OR OTHER TOBACCO
6 PRODUCTS were sold in the State; and

7 (2) assess the tax due.

8 (b) If the Comptroller determines that a person has possessed or transported
9 cigarettes OR OTHER TOBACCO PRODUCTS on which the tobacco tax has not been paid
10 as required under Title 12 of this article, the Comptroller shall assess the tobacco tax due.

11 13-834.

12 (c) "Contraband [cigarettes] TOBACCO PRODUCTS" means cigarettes OR
13 OTHER TOBACCO PRODUCTS, as defined in § 12-101 of this article:

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

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

18 (e) "Conveyance" means:

19 (1) an aircraft, vehicle, or vessel used to transport alcoholic beverages [or],
20 cigarettes, OR OTHER TOBACCO PRODUCTS; and

21 (2) a tank car, vehicle, or vessel that is used to transport motor fuel and
22 that, exclusive of any tank used for its own propulsion, has a capacity exceeding 50
23 gallons.

24 13-835.

25 (a) The Comptroller or a peace officer of the State may:

26 (1) seize contraband alcoholic beverages or contraband [cigarettes]
27 TOBACCO PRODUCTS in the State without a warrant;

28 (2) stop and search a conveyance in the State if the Comptroller or officer
29 knows or has reason to suspect that the conveyance is being used to transport IN THE
30 STATE CONTRABAND TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$100 OR
31 MORE OR contraband alcoholic beverages [or 5 or more cartons of contraband cigarettes
32 in the State]; and

33 (3) seize a conveyance being used in the State to transport contraband
34 alcoholic beverages or contraband [cigarettes] TOBACCO PRODUCTS.

35 13-836.

36 (a) (1) If contraband alcoholic beverages or contraband [cigarettes] TOBACCO
37 PRODUCTS are seized:

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

3 (ii) The Comptroller shall:

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

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

8 (b) (2) A police officer who seizes any contraband [cigarettes] TOBACCO
9 PRODUCTS or conveyance used to transport contraband [cigarettes] TOBACCO
10 PRODUCTS shall deliver the seized cigarettes OR OTHER TOBACCO PRODUCTS and
11 conveyance to the Comptroller.

12 13-837.

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

15 (1) the seizure of alcoholic beverages, cigarettes, OTHER TOBACCO
16 PRODUCTS, motor fuel or conveyances used to transport motor fuel; or

17 (2) a notice of seizure of a conveyance used to transport alcoholic beverages
18 [or], cigarettes, OR OTHER TOBACCO PRODUCTS is published.

19 13-839.

20 (a) If a person files a claim for return of seized alcoholic beverages, cigarettes,
21 OTHER TOBACCO PRODUCTS, or a conveyance used for their transportation under §
22 13-837 of this subtitle, the Comptroller or the Comptroller's designee shall:

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

24 (2) direct the return of alcoholic beverages [or], cigarettes, OR OTHER
25 TOBACCO PRODUCTS unless the Comptroller or Comptroller's designee has satisfactory
26 proof that the person was not in compliance with any provisions of Title 5 or Title 12 of
27 this article at the time of seizure; and

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

31 (b) The Comptroller or Comptroller's designee shall grant or deny the application
32 for return of seized alcoholic beverages, cigarettes, OTHER TOBACCO PRODUCTS, or a
33 conveyance in accordance with subsection (a) of this section by mailing the person a
34 notice of final determination.

35 13-841.

36 (b) (1) The Comptroller shall sell contraband [cigarettes] TOBACCO
37 PRODUCTS seized under this title and forfeited to a State institution, a nonprofit
38 charitable institution, a licensed cigarette wholesaler, or a licensed cigarette
39 manufacturer in the manner the Comptroller determines.

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1 (2) The Comptroller shall sell at public auction a conveyance that is seized
2 under this title in connection with contraband [cigarettes] TOBACCO PRODUCTS and
3 forfeited.

4 13-842.

5 A person who possessed contraband alcoholic beverages, contraband [cigarettes]
6 TOBACCO PRODUCTS, or contraband motor fuel that are seized and sold under this
7 section is not relieved from any penalty under this title.

8 13-1014.

9 (a) A person who willfully possesses, sells, or attempts to sell unstamped or
10 improperly stamped cigarettes OR OTHER TOBACCO PRODUCTS ON WHICH THE
11 TOBACCO TAX HAS NOT BEEN PAID in the State in violation of Title 12 of this article is
12 guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or
13 imprisonment not exceeding 1 year or both.

14 13-1015.

15 A person who willfully transports in the State unstamped cigarettes OR OTHER
16 TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID in violation
17 of § 16-219 of the Business Regulation Article is guilty of a felony and, on conviction, is
18 subject to a fine not exceeding \$25 for each carton of cigarettes transported or
19 imprisonment not exceeding 1 year or both.

20 **Article - Business Regulation**

21 16-219.

22 (A) IN THIS SECTION, "OTHER TOBACCO PRODUCTS" HAS THE MEANING
23 STATED IN § 12-101 OF THE TAX - GENERAL ARTICLE.

24 (B) A person who transports cigarettes OR OTHER TOBACCO PRODUCTS by
25 vehicle on a public road shall have in the vehicle a delivery ticket or invoice that states:

26 (1) the name and address of the seller or consignor;

27 (2) the name and address of a buyer or consignee who is:

28 (i) a person in the State authorized by Title 12 of the Tax - General
29 Article to hold unstamped cigarettes OR OTHER TOBACCO PRODUCTS ON WHICH THE
30 TOBACCO TAX HAS NOT BEEN PAID; or

31 (ii) a person in another jurisdiction authorized to hold cigarettes OR
32 OTHER TOBACCO PRODUCTS on which the tax imposed by that jurisdiction has not been
33 paid; and

34 (3) the quantity and brands of the cigarettes OR OTHER TOBACCO
35 PRODUCTS that are being transported.

36 SECTION 2. AND BE IT FURTHER ENACTED, That all cigarettes used,
37 possessed, or held in the State of Maryland by any person for sale or use in the State of
38 Maryland shall be subject to the full tobacco tax on cigarettes imposed by this Act. This
39 requirement includes: (1) cigarettes in vending machines or other mechanical dispensers;

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1 and (2) cigarettes (generally referred to as "floor stock") in packages which already bear
2 stamps issued by the Comptroller under the State Tobacco Tax Act but for an amount less
3 than the full tax imposed of 68 cents for each 10 cigarettes or fractional part thereof; all
4 cigarettes held for sale by any person in the State of Maryland on and after July 1, 1997
5 which bear a tax stamp issued by the Comptroller of a value less than \$1.36 for each pack
6 of 20 cigarettes must be stamped with the additional stamps necessary to make the
7 aggregate value equal to \$1.36. In lieu of the additional stamps necessary to make the
8 aggregate tax value equal to \$1.36, the Comptroller may provide an alternate method of
9 collecting the additional tax. The revenue attributable to this requirement shall be
10 remitted to the State Comptroller's Office by September 30, 1997. Except as provided
11 above, on and after July 1, 1997, no Maryland stamp shall be used except the stamp issued
12 by the Comptroller to evidence the tobacco tax on cigarettes of \$1.36 imposed by this Act.

13 SECTION 3. AND BE IT FURTHER ENACTED, That the tobacco tax on tobacco
14 products other than cigarettes imposed by § 12-102 of the Tax - General Article as
15 enacted under Section 1 of this Act shall take effect October 1, 1997 and shall be
16 applicable to all other tobacco products that are sold by a wholesaler to a retailer in the
17 State on or after October 1, 1997.

18 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
19 Section 3 of this Act, this Act shall take effect July 1, 1997.