

HOUSE BILL 190

Unofficial Copy
Q7

1999 Regular Session
9lr0204
CF 9lr0203

By: **The Speaker (Administration) and Delegates Hixson, Frush, Marriott, R. Baker, Barkley, Benson, Bobo, Bronrott, Brown, Burns, Carlson, Conroy, Cryor, D. Davis, Dembrow, Dobson, Doory, Dypski, Finifter, Franchot, Goldwater, Grosfeld, Harrison, Healey, Hecht, Heller, Hill, Howard, Hubbard, Hurson, A. Jones, V. Jones, Kirk, Kopp, Krysiak, Mandel, McIntosh, Menes, Moe, Montague, Morhaim, Nathan-Pulliam, Paige, Patterson, Pendergrass, Petzold, Phillips, Pitkin, Sher, Shriver, Stern, Swain, Turner, Valderrama, and Zirkin**

Introduced and read first time: February 1, 1999
Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Tax**

3 FOR the purpose of altering the tobacco tax rate for cigarettes; providing for certain
4 increases in the tobacco tax rate for cigarettes; altering a certain discount
5 provision under the tobacco tax; imposing the tobacco tax on certain tobacco
6 products other than cigarettes; setting the rate of the tobacco tax for other
7 tobacco products; defining certain terms; altering certain definitions under the
8 tobacco tax law; requiring the Comptroller to establish by regulation a system of
9 administering, collecting, and enforcing the tobacco tax on other tobacco
10 products; making other tobacco products subject to certain enforcement
11 provisions applicable to cigarettes; prohibiting certain acts relating to other
12 tobacco products; imposing certain requirements relating to certain
13 transportation of other tobacco products; providing for the termination of certain
14 provisions of this Act; providing for a delayed effective date for certain
15 provisions of this Act; providing for the application of this Act; requiring the
16 Governor to make certain appropriations in the budget for certain fiscal years;
17 and generally relating to the taxation of cigarettes and other tobacco products.

18 BY repealing and reenacting, with amendments,
19 Article - Tax - General
20 Section 12-105 and 12-303(b)
21 Annotated Code of Maryland
22 (1997 Replacement Volume and 1998 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Tax - General
25 Section 12-105 and 12-303(b)

1 Annotated Code of Maryland
2 (1997 Replacement Volume and 1998 Supplement)
3 (As enacted by Section 1 of this Act)

4 BY repealing and reenacting, without amendments,
5 Article - Tax - General
6 Section 12-101(a)
7 Annotated Code of Maryland
8 (1997 Replacement Volume and 1998 Supplement)

9 BY adding to
10 Article - Tax - General
11 Section 12-101(b-1) and (e-1), 12-302(c), and 12-306
12 Annotated Code of Maryland
13 (1997 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Tax - General
16 Section 12-101(f), 12-102, 12-103, 12-104, 12-202, 12-203, 13-408, 13-834(c)
17 and (e), 13-835(a), 13-836(a)(1) and (b)(2), 13-837, 13-839, 13-841(b),
18 13-842, 13-1014(a), and 13-1015
19 Annotated Code of Maryland
20 (1997 Replacement Volume and 1998 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - Business Regulation
23 Section 16-219
24 Annotated Code of Maryland
25 (1998 Replacement Volume)

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

28 **Article - Tax - General**

29 12-105.

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

31 (1) [18] 43 cents for each package of 10 or fewer cigarettes;

32 (2) [36] 86 cents for each package of at least 11 and not more than 20
33 cigarettes;

34 (3) [1.8] 4.3 cents for each cigarette in a package of more than 20
35 cigarettes; and

1 (4) [1.8] 4.3 cents for each cigarette in a package of free sample
2 cigarettes.

3 (B) THE TOBACCO TAX RATE FOR OTHER TOBACCO PRODUCTS IS 25% OF THE
4 WHOLESALE PRICE OF THE OTHER TOBACCO PRODUCTS.

5 12-303.

6 (b) The Comptroller shall allow a licensed wholesaler a discount of [1.36%]
7 0.57% of the purchase price of tax stamps.

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

10 **Article - Tax - General**

11 12-105.

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

13 (1) [43] 68 cents for each package of 10 or fewer cigarettes;

14 (2) [86 cents] \$1.36 for each package of at least 11 and not more than 20
15 cigarettes;

16 (3) [4.3] 6.8 cents for each cigarette in a package of more than 20
17 cigarettes; and

18 (4) [4.3] 6.8 cents for each cigarette in a package of free sample
19 cigarettes.

20 (b) The tobacco tax rate for other tobacco products is 25% of the wholesale
21 price of the other tobacco products.

22 12-303.

23 (b) The Comptroller shall allow a licensed wholesaler a discount of [0.57%]
24 0.36% of the purchase price of tax stamps.

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

27 **Article - Tax - General**

28 12-101.

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

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

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

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

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

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

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

12 (2) A PERSON WHO:

13 (I) HOLDS OTHER TOBACCO PRODUCTS FOR SALE TO ANOTHER
14 PERSON FOR RESALE; OR

15 (II) SELLS OTHER TOBACCO PRODUCTS TO ANOTHER PERSON FOR
16 RESALE.

17 12-102.

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

20 (b) A county, municipal corporation, special taxing district, or other political
21 subdivision of the State may not impose a tax on cigarettes.

22 12-103.

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

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

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

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

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

1 12-104.

2 (a) "Consumer" means a person who possesses cigarettes OR OTHER TOBACCO
3 PRODUCTS for a purpose other than selling or transporting the cigarettes OR OTHER
4 TOBACCO PRODUCTS.

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

6 (1) cigarettes that[:

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

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

13 (3) CIGARETTES OR OTHER TOBACCO PRODUCTS THAT:

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

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

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

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

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

23 [1.] A. for a consumer who is a member of an armed forces
24 unit or who is entitled by law to make a purchase at an armed forces exchange,
25 OTHER TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$50 OR 2 cartons OF
26 CIGARETTES; or

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

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

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

1 12-202.

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

4 (1) FOR CIGARETTES:

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

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

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

13 (b) Each return shall state the quantity of cigarettes OR THE WHOLESALE
14 PRICE OF OTHER TOBACCO PRODUCTS sold during the period that the return covers.
15 12-203.

16 (a) Each wholesaler shall:

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

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

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

22 (b) A wholesaler shall:

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

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

26 12-302.

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

30 (2) IF A RETAILER OR CONSUMER POSSESSES OTHER TOBACCO
31 PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID, THE
32 RETAILER OR CONSUMER SHALL PAY THE TOBACCO TAX ON THOSE OTHER TOBACCO
33 PRODUCTS.

1 12-306.

2 (A) THE COMPTROLLER SHALL ESTABLISH, BY REGULATION, A SYSTEM OF
3 ADMINISTERING, COLLECTING, AND ENFORCING THE TOBACCO TAX ON OTHER
4 TOBACCO PRODUCTS.

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

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

8 (2) PAYMENT OF THE TAX BY:

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

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

13 (3) ANY OTHER PROVISION THAT THE COMPTROLLER CONSIDERS
14 NECESSARY TO EFFICIENTLY AND ECONOMICALLY ADMINISTER, COLLECT, AND
15 ENFORCE THE TAX.

16 13-408.

17 (a) If the Comptroller determines that a person has failed to keep the records
18 of out-of-state cigarette OR OTHER TOBACCO PRODUCT sales required under §
19 12-203 of this article, the Comptroller shall:

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

22 (2) assess the tax due.

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

27 13-834.

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

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

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

34 (e) "Conveyance" means:

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

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

6 13-835.

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

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

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

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

17 13-836.

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

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

22 (ii) The Comptroller shall:

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

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

27 (b) (2) A police officer who seizes any contraband [cigarettes] TOBACCO
28 PRODUCTS or conveyance used to transport contraband [cigarettes] TOBACCO
29 PRODUCTS shall deliver the seized cigarettes OR OTHER TOBACCO PRODUCTS and
30 conveyance to the Comptroller.

31 13-837.

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

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

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

3 13-839.

4 (a) If a person files a claim for return of seized alcoholic beverages, cigarettes,
5 OTHER TOBACCO PRODUCTS, or a conveyance used for their transportation under §
6 13-837 of this subtitle, the Comptroller or the Comptroller's designee shall:

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

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

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

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

20 13-841.

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

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

28 13-842.

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

32 13-1014.

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

1 13-1015.

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

7 **Article - Business Regulation**

8 16-219.

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

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

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

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

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

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

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

24 SECTION 4. AND BE IT FURTHER ENACTED, That for fiscal year 2001 and
25 each fiscal year thereafter, the Governor shall include in the budget capital
26 appropriations for education facilities in the State in a total amount equal to the
27 estimated increase in State revenues for the fiscal year resulting from the enactment
28 of Section 2 of this Act.

29 SECTION 5. AND BE IT FURTHER ENACTED, That all cigarettes used,
30 possessed, or held in the State on or after July 1, 1999 by any person for sale or use
31 in the State shall be subject to the full tobacco tax of 86 cents on cigarettes imposed by
32 this Act. This requirement includes: (1) cigarettes in vending machines or other
33 mechanical dispensers; and (2) cigarettes (generally referred to as "floor stock") in
34 packages which already bear stamps issued by the Comptroller under the State
35 Tobacco Tax Act but for an amount less than the full tax imposed of 43 cents for each
36 10 cigarettes or fractional part thereof; all cigarettes held for sale by any person in
37 the State on or after July 1, 1999 that bear a tax stamp issued by the Comptroller of
38 a value less than 86 cents for each pack of 20 cigarettes must be stamped with the

1 additional stamps necessary to make the aggregate value equal to 86 cents. In lieu of
2 the additional stamps necessary to make the aggregate tax value equal to 86 cents,
3 the Comptroller may provide an alternate method of collecting the additional tax. The
4 revenue attributable to this requirement shall be remitted to the Comptroller by
5 September 30, 1999. Except as provided above, on and after July 1, 1999, no
6 Maryland stamp shall be used except the stamp issued by the Comptroller to evidence
7 the tobacco tax on cigarettes of 86 cents imposed by this Act.

8 SECTION 6. AND BE IT FURTHER ENACTED, That all cigarettes used,
9 possessed, or held in the State on or after July 1, 2000 by any person for sale or use
10 in the State shall be subject to the full tobacco tax of \$1.36 on cigarettes imposed by
11 this Act. This requirement includes: (1) cigarettes in vending machines or other
12 mechanical dispensers; and (2) cigarettes (generally referred to as "floor stock") in
13 packages which already bear stamps issued by the Comptroller under the State
14 Tobacco Tax Act but for an amount less than the full tax imposed of 68 cents for each
15 10 cigarettes or fractional part thereof; all cigarettes held for sale by any person in
16 the State on or after July 1, 2000 that bear a tax stamp issued by the Comptroller of
17 a value less than \$1.36 for each pack of 20 cigarettes must be stamped with the
18 additional stamps necessary to make the aggregate value equal to \$1.36. In lieu of the
19 additional stamps necessary to make the aggregate tax value equal to \$1.36, the
20 Comptroller may provide an alternate method of collecting the additional tax. The
21 revenue attributable to this requirement shall be remitted to the Comptroller by
22 September 30, 2000. Except as provided above, on and after July 1, 2000, no
23 Maryland stamp shall be used except the stamp issued by the Comptroller to evidence
24 the tobacco tax on cigarettes of \$1.36 imposed by this Act.

25 SECTION 7. AND BE IT FURTHER ENACTED, That the tobacco tax on
26 tobacco products other than cigarettes imposed by this Act shall be applicable to all
27 other tobacco products that are sold by a wholesaler to a retailer in the State on or
28 after October 1, 1999.

29 SECTION 8. AND BE IT FURTHER ENACTED, That Section 1 of this Act
30 shall remain effective for a period of 1 year and, at the end of June 30, 2000, with no
31 further action required by the General Assembly, Section 1 of this Act shall be of no
32 further force and effect.

33 SECTION 9. AND BE IT FURTHER ENACTED, That Section 2 of this Act
34 shall take effect July 1, 2000.

35 SECTION 10. AND BE IT FURTHER ENACTED, That Sections 1 and 3
36 through 8 of this Act shall take effect July 1, 1999.