

SENATE BILL 143

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Q7

1999 Regular Session
9lr0203
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By: **The President (Administration) and Senators Van Hollen, Pinsky,
McFadden, Blount, Dorman, Exum, Forehand, Frosh, Green, Hollinger,
Kasemeyer, Kelley, Lawlah, Mitchell, Ruben, and Teitelbaum**

Introduced and read first time: January 22, 1999

Assigned to: Budget and Taxation and Judicial Proceedings

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)
26 Annotated Code of Maryland
27 (1997 Replacement Volume and 1998 Supplement)
28 (As enacted by Section 1 of this Act)

29 BY repealing and reenacting, without amendments,

1 Article - Tax - General
 2 Section 12-101(a)
 3 Annotated Code of Maryland
 4 (1997 Replacement Volume and 1998 Supplement)

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

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

17 BY repealing and reenacting, with amendments,
 18 Article - Business Regulation
 19 Section 16-219
 20 Annotated Code of Maryland
 21 (1998 Replacement Volume)

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

24 **Article - Tax - General**

25 12-105.

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

27 (1) [18] 43 cents for each package of 10 or fewer cigarettes;

28 (2) [36] 86 cents for each package of at least 11 and not more than 20
 29 cigarettes;

30 (3) [1.8] 4.3 cents for each cigarette in a package of more than 20
 31 cigarettes; and

32 (4) [1.8] 4.3 cents for each cigarette in a package of free sample
 33 cigarettes.

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

1 12-303.

2 (b) The Comptroller shall allow a licensed wholesaler a discount of [1.36%]
3 0.57% of the purchase price of tax stamps.

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

6 **Article - Tax - General**

7 12-105.

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

9 (1) [43] 68 cents for each package of 10 or fewer cigarettes;

10 (2) [86 cents] \$1.36 for each package of at least 11 and not more than 20
11 cigarettes;

12 (3) [4.3] 6.8 cents for each cigarette in a package of more than 20
13 cigarettes; and

14 (4) [4.3] 6.8 cents for each cigarette in a package of free sample
15 cigarettes.

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

18 12-303.

19 (b) The Comptroller shall allow a licensed wholesaler a discount of [0.57%]
20 0.36% of the purchase price of tax stamps.

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

23 **Article - Tax - General**

24 12-101.

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

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

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

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

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

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

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

7 (2) A PERSON WHO:

8 (I) HOLDS OTHER TOBACCO PRODUCTS FOR SALE TO ANOTHER
9 PERSON FOR RESALE; OR

10 (II) SELLS OTHER TOBACCO PRODUCTS TO ANOTHER PERSON FOR
11 RESALE.

12 12-102.

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

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

17 12-103.

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

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

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

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

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

30 12-104.

31 (a) "Consumer" means a person who possesses cigarettes OR OTHER TOBACCO
32 PRODUCTS for a purpose other than selling or transporting the cigarettes OR OTHER
33 TOBACCO PRODUCTS.

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

1 (1) cigarettes that[:

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

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

8 (3) CIGARETTES OR OTHER TOBACCO PRODUCTS THAT:

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

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

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

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

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

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

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

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

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

29 12-202.

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

32 (1) FOR CIGARETTES:

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

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

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

6 (b) Each return shall state the quantity of cigarettes OR THE WHOLESALE
7 PRICE OF OTHER TOBACCO PRODUCTS sold during the period that the return covers.
8 12-203.

9 (a) Each wholesaler shall:

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

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

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

15 (b) A wholesaler shall:

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

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

19 12-302.

20 (C) (1) THE TOBACCO TAX ON OTHER TOBACCO PRODUCTS SHALL BE PAID
21 BY THE WHOLESALE WHO SELLS THE OTHER TOBACCO PRODUCTS TO A RETAILER
22 OR CONSUMER IN THE STATE.

23 (2) IF A RETAILER OR CONSUMER POSSESSES OTHER TOBACCO
24 PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID, THE
25 RETAILER OR CONSUMER SHALL PAY THE TOBACCO TAX ON THOSE OTHER TOBACCO
26 PRODUCTS.

27 12-306.

28 (A) THE COMPTROLLER SHALL ESTABLISH, BY REGULATION, A SYSTEM OF
29 ADMINISTERING, COLLECTING, AND ENFORCING THE TOBACCO TAX ON OTHER
30 TOBACCO PRODUCTS.

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

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

1 (2) PAYMENT OF THE TAX BY:

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

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

6 (3) ANY OTHER PROVISION THAT THE COMPTROLLER CONSIDERS
7 NECESSARY TO EFFICIENTLY AND ECONOMICALLY ADMINISTER, COLLECT, AND
8 ENFORCE THE TAX.

9 13-408.

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

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

15 (2) assess the tax due.

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

20 13-834.

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

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

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

27 (e) "Conveyance" means:

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

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

33 13-835.

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

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

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

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

10 13-836.

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

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

15 (ii) The Comptroller shall:

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

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

20 (b) (2) A police officer who seizes any contraband [cigarettes] TOBACCO
21 PRODUCTS or conveyance used to transport contraband [cigarettes] TOBACCO
22 PRODUCTS shall deliver the seized cigarettes OR OTHER TOBACCO PRODUCTS and
23 conveyance to the Comptroller.

24 13-837.

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

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

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

31 13-839.

32 (a) If a person files a claim for return of seized alcoholic beverages, cigarettes,
33 OTHER TOBACCO PRODUCTS, or a conveyance used for their transportation under §
34 13-837 of this subtitle, the Comptroller or the Comptroller's designee shall:

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

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

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

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

13 13-841.

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

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

21 13-842.

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

25 13-1014.

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

31 13-1015.

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

Article - Business Regulation

1 16-219.

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

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

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

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

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

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

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

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

23 SECTION 5. AND BE IT FURTHER ENACTED, That all cigarettes used,
24 possessed, or held in the State on or after July 1, 1999 by any person for sale or use
25 in the State shall be subject to the full tobacco tax of 86 cents on cigarettes imposed by
26 this Act. This requirement includes: (1) cigarettes in vending machines or other
27 mechanical dispensers; and (2) cigarettes (generally referred to as "floor stock") in
28 packages which already bear stamps issued by the Comptroller under the State
29 Tobacco Tax Act but for an amount less than the full tax imposed of 43 cents for each
30 10 cigarettes or fractional part thereof; all cigarettes held for sale by any person in
31 the State on or after July 1, 1999 that bear a tax stamp issued by the Comptroller of
32 a value less than 86 cents for each pack of 20 cigarettes must be stamped with the
33 additional stamps necessary to make the aggregate value equal to 86 cents. In lieu of
34 the additional stamps necessary to make the aggregate tax value equal to 86 cents,
35 the Comptroller may provide an alternate method of collecting the additional tax. The
36 revenue attributable to this requirement shall be remitted to the Comptroller by
37 September 30, 1999. Except as provided above, on and after July 1, 1999, no
38 Maryland stamp shall be used except the stamp issued by the Comptroller to evidence
39 the tobacco tax on cigarettes of 86 cents imposed by this Act.

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

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

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

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

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