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By: **Chairman, Ways and Means Committee (By Request - Departmental -  
Natural Resources)**

Introduced and read first time: February 5, 2003

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Vessel Excise Tax - Liability - Corporations and Companies**

3 FOR the purpose of providing that the personal liability for the vessel excise tax  
4 extends to certain officers of corporations, individuals and members of limited  
5 liability companies, and individuals and partners of limited liability  
6 partnerships under certain circumstances; providing that the members of a  
7 limited liability company and partners of a limited liability partnership may not  
8 be considered to be managing the business and affairs of the entity solely  
9 because they are engaged in certain activities; providing that an assessment of  
10 the vessel excise tax is prima facie correct; and generally relating to the  
11 imposition of liability for the vessel excise tax on certain officers, members, and  
12 individuals of certain business entities.

13 BY repealing and reenacting, with amendments,  
14 Article - Natural Resources  
15 Section 8-716.1  
16 Annotated Code of Maryland  
17 (2000 Replacement Volume and 2002 Supplement)

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

20 **Article - Natural Resources**

21 8-716.1.

22 (a) The dealer shall collect the excise tax for the Department. For collecting  
23 and remitting the tax, a dealer may keep 1.2% of the gross tax the dealer collects. A  
24 dealer may not keep 1.2% of any gross tax amounts which were not forwarded to the  
25 Department within 30 days of collection, unless a waiver has been approved by the  
26 Secretary.

27 (b) If the Department finds that a dealer has forwarded less than the amount  
28 of tax due and does not have adequate records or has incorrect records of sales or

1 resales of new or used vessels and that the amount of excise tax collected for the  
2 Department on these sales cannot be determined accurately, the Department shall  
3 determine the taxable sales of the dealer for any period involved and compute the tax  
4 from the best information available. The computation shall be prima facie correct.  
5 However, if any dealer fails to keep any record of sales of vessels, the Department  
6 may determine the tax due to the Department by using a factor developed by  
7 surveying the business of the dealer, including any records available, or by surveying  
8 other taxpayers of the same type or otherwise compute the amount of tax due. This  
9 computation shall be prima facie correct.

10 (c) As provided in subsection (b) of this section, if the Department determines  
11 the taxable sales and computes the tax due, the Department shall levy against the  
12 dealer a deficiency assessment consisting of a penalty of 10%, plus interest at a rate  
13 of 1.5% per month, or fraction of a month, from the time the tax was due until paid.  
14 All amounts received from any dealer under this subsection shall be credited first to  
15 penalty and interest accrued and then to tax due.

16 (d) (1) If a person obligated to pay the tax fails to pay the tax when due,  
17 there shall be assessed against the person, in addition to the tax due, a penalty of 10%  
18 plus interest at the rate of 1.5% per month or fraction of a month from the time the  
19 tax was due until paid. This penalty and interest may be waived by the Secretary if,  
20 within 30 days from the date of mailing of the notice of assessment, the taxpayer files  
21 an appeal showing cause why the tax is not paid when due. Any amounts received  
22 from any dealer or owner under this subsection shall be credited first to penalty and  
23 interest accrued and then to tax due.

24 (2) If the failure to pay the tax is due to an attempt to defraud, then the  
25 penalty shall be, in lieu of the penalty more specifically provided for under paragraph  
26 (1) of this subsection, 100% of the tax due plus interest at the rate of 1.5% per month  
27 or fraction of a month from the time due until paid.

28 (e) (1) If the Department finds that any dealer or other person liable for the  
29 tax imposed by this subtitle intends to depart from the State, remove the dealer's or  
30 other person's property from the State, conceal the dealer or other person or their  
31 property in the State, or do any other act tending to prejudice or render wholly or  
32 partly ineffectual proceedings to collect the tax, the Department shall notify the  
33 dealer or other person of its findings and demand an immediate payment of the tax,  
34 interest, and penalty.

35 (2) If the amount of tax, interest, and penalty specified in the notice of  
36 jeopardy assessment is not paid within 10 days of the service of the notice, the  
37 Department may bring any action that the Department considers advisable for the  
38 prompt collection of the tax.

39 (3) If, within 10 days of the service of the notice, the person liable for the  
40 tax files with the Department satisfactory evidence that the person is not in default in  
41 paying the tax or that the person will duly return and pay the tax, then the tax is not  
42 payable before the time otherwise required by this section. However, in each case, the

1 findings of the Department as to the responsibility of the person liable for the tax are  
2 final and conclusive.

3 (f) (1) The tax imposed by this subtitle and all increases, interests, and  
4 penalties on the tax shall become, from the time due and payable, a personal debt of  
5 the person liable to pay the tax to the State of Maryland. An action may be brought at  
6 any time within 3 years from the time the tax shall be due and payable by the  
7 Department in the name of the State to recover the amount of any taxes, penalties,  
8 and interest due under the provisions of this subtitle, but if there is proof of fraud or  
9 gross negligence, there shall be no limitation of the period in which the action may be  
10 brought. Proof of negligence amounting to 25% or more of the tax due shall be prima  
11 facie evidence of gross negligence.

12 (2) The tax and all increases, interests, and penalties on the tax shall be  
13 a lien upon all the property, real or personal, of any person liable to pay the tax to the  
14 State from and after the time when notice has been given that the tax has become due  
15 and payable as provided in this section. Notice of the lien shall be filed promptly by  
16 the Department with the clerk of the circuit court of the county in which the property  
17 is located or Baltimore City. Each clerk of court accurately and promptly shall record  
18 and index all the notices of lien filed with the clerk by the Department and shall enter  
19 the lien in the judgment docket of the court, stating the name of the delinquent  
20 taxpayer, the amount of the lien and the date of the lien. The lien provided for in this  
21 section shall have the full force and effect of a lien of judgment. Unless another date  
22 is specified by law, the lien arising at the date of nonpayment, as in this section  
23 specified and provided for, shall continue with the same force and effect as a judgment  
24 lien. Any judgment lien on personal property is not effective as against an innocent  
25 purchaser for value, unless the personal property has been levied upon by an officer of  
26 a court.

27 (G) IF A PERSON OR ENTITY LIABLE FOR THE EXCISE TAX AND FOR THE  
28 INTEREST AND PENALTIES OF THE TAX UNDER THIS SUBTITLE IS A CORPORATION  
29 OR LIMITED LIABILITY COMPANY OR LIMITED LIABILITY PARTNERSHIP, INCLUDING  
30 A LIMITED PARTNERSHIP REGISTERED AS A LIMITED LIABILITY LIMITED  
31 PARTNERSHIP, PERSONAL LIABILITY FOR THE EXCISE TAX AND FOR THE INTEREST  
32 AND PENALTIES OF THE TAX EXTENDS TO:

33 (1) IN THE CASE OF A CORPORATION:

34 (I) THE PRESIDENT, VICE PRESIDENT, OR TREASURER OF THE  
35 CORPORATION; AND

36 (II) ANY OFFICER OF THE CORPORATION WHO DIRECTLY OR  
37 INDIRECTLY OWNS MORE THAN 20% OF THE STOCK OF THE CORPORATION; AND

38 (2) IN THE CASE OF A LIMITED LIABILITY COMPANY:

39 (I) IF THE LIMITED LIABILITY COMPANY DOES NOT HAVE AN  
40 OPERATING AGREEMENT, ALL MEMBERS; OR

1 (II) IF THE LIMITED LIABILITY COMPANY HAS AN OPERATING  
2 AGREEMENT, THOSE INDIVIDUALS WHO MANAGE THE BUSINESS AND AFFAIRS OF  
3 THE LIMITED LIABILITY COMPANY; AND

4 (3) IN THE CASE OF A LIMITED LIABILITY PARTNERSHIP:

5 (I) IF THE LIMITED LIABILITY PARTNERSHIP DOES NOT HAVE A  
6 WRITTEN PARTNERSHIP AGREEMENT, ALL GENERAL PARTNERS; OR

7 (II) IF THE LIMITED LIABILITY PARTNERSHIP HAS A WRITTEN  
8 PARTNERSHIP AGREEMENT, THOSE INDIVIDUALS WHO MANAGE THE BUSINESS AND  
9 AFFAIRS OF THE LIMITED LIABILITY PARTNERSHIP.

10 (H) A MEMBER OF A LIMITED LIABILITY COMPANY DOES NOT MANAGE THE  
11 BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY UNDER SUBSECTION  
12 (G) OF THIS SECTION SOLELY BY DOING ONE OR MORE OF THE FOLLOWING:

13 (1) CONSULTING WITH OR ADVISING THE INDIVIDUALS WHO MANAGE  
14 THE BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY;

15 (2) DIRECTING THE MANAGEMENT OF THE LIMITED LIABILITY  
16 COMPANY IN THE SAME MANNER AS A DIRECTOR OF A CORPORATION DIRECTS THE  
17 MANAGEMENT OF A CORPORATION; OR

18 (3) VOTING ON ANY MATTER REQUIRED TO BE VOTED ON BY THE  
19 MEMBERS OF THE LIMITED LIABILITY COMPANY, INCLUDING BUT NOT LIMITED TO:

20 (I) THE APPROVAL OR DISAPPROVAL OF AMENDMENTS TO THE  
21 OPERATING AGREEMENT;

22 (II) THE TERMINATION AND WINDING UP OF THE LIMITED  
23 LIABILITY COMPANY;

24 (III) THE SALE, EXCHANGE, LEASE, MORTGAGE, PLEDGE, OR OTHER  
25 TRANSFER OF A MATERIAL PORTION OF THE ASSETS OF THE LIMITED LIABILITY  
26 COMPANY;

27 (IV) THE INCURRING OF INDEBTEDNESS BY THE LIMITED LIABILITY  
28 COMPANY OTHER THAN IN THE ORDINARY COURSE OF ITS BUSINESS;

29 (V) A CHANGE IN THE NATURE OF THE BUSINESS OF THE LIMITED  
30 LIABILITY COMPANY;

31 (VI) THE EXPULSION OR ADMISSION OF A MEMBER;

32 (VII) THE APPOINTMENT OR DISCHARGE OF A MANAGER;

33 (VIII) THE MERGER OF THE LIMITED LIABILITY COMPANY WITH OR  
34 INTO ANY OTHER ENTITY; OR

1 (IX) ANY MATTER RELATED TO THE BUSINESS OF THE LIMITED  
2 LIABILITY COMPANY NOT OTHERWISE ENUMERATED IN THIS SUBSECTION THAT THE  
3 OPERATING AGREEMENT STATES MAY BE SUBJECT TO THE APPROVAL OR  
4 DISAPPROVAL OF THE MEMBERS.

5 (I) THE POSSESSION OR EXERCISE OF POWERS OTHER THAN THOSE  
6 CONTAINED IN SUBSECTION (H) OF THIS SECTION BY A MEMBER DOES NOT  
7 NECESSARILY CONSTITUTE MANAGEMENT BY THE MEMBER OF THE BUSINESS OR  
8 AFFAIRS OF THE LIMITED LIABILITY COMPANY.

9 (J) THE SAME RULES AND EXCEPTIONS APPLICABLE TO A MEMBER OF A  
10 LIMITED LIABILITY COMPANY SET FORTH IN SUBSECTIONS (H) AND (I) SHALL BE  
11 APPLICABLE TO INDIVIDUALS AND MEMBERS OF LIMITED LIABILITY PARTNERSHIPS.

12 [(3)] (K) Notwithstanding any other provision of law, the Department  
13 may not collect or enforce any liability for the Maryland use tax that was incurred  
14 before July 1, 1986 on a vessel owned by a person who at the time the liability was  
15 incurred:

16 [(i) 1.] (1) (I) Was licensed by the Department to catch, for  
17 commercial purposes, finfish, eels, crabs, conch, terrapin, soft-shell clams, hard-shell  
18 clams, oysters, or any other fish; and

19 [2.] (II) Used the vessel for any of the commercial fishing  
20 purposes described in [item (i)1] ITEM (1)(I) of this paragraph; or

21 [(ii) 1.] (2) (I) Was licensed as a commercial fishing guide  
22 under the provisions of § 4-210 of this article; and

23 [2.] (II) Used the vessel as a charter boat with a license as  
24 provided in § 4-745(d)(2) of this article.

25 (L) AN ASSESSMENT OF TAX UNDER THIS SUBTITLE IS PRIMA FACIE  
26 CORRECT.

27 [(g)] (M) (1) A dealer or other person liable for the tax imposed by this  
28 subtitle may not:

29 (i) Willfully fail to collect the tax;

30 (ii) Willfully fail to remit the tax;

31 (iii) Willfully make any false statement or misleading omission with  
32 regard to the tax;

33 (iv) Willfully fail to keep records in accordance with this subtitle  
34 and any regulations pursuant to this subtitle; or

35 (v) Willfully evade payment of the tax by any means.

1                   (2)       Any person violating this subsection is guilty of a misdemeanor and  
2 upon conviction is subject to the penalties set forth in § 8-739 of this subtitle.

3       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
4 effect July 1, 2003.