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

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Assigned to: Ways and Means

Committee Report: Favorable

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CHAPTER _____

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:

1

Article - Natural Resources

2 8-716.1.

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

8 (b) If the Department finds that a dealer has forwarded less than the amount
9 of tax due and does not have adequate records or has incorrect records of sales or
10 resales of new or used vessels and that the amount of excise tax collected for the
11 Department on these sales cannot be determined accurately, the Department shall
12 determine the taxable sales of the dealer for any period involved and compute the tax
13 from the best information available. The computation shall be prima facie correct.
14 However, if any dealer fails to keep any record of sales of vessels, the Department
15 may determine the tax due to the Department by using a factor developed by
16 surveying the business of the dealer, including any records available, or by surveying
17 other taxpayers of the same type or otherwise compute the amount of tax due. This
18 computation shall be prima facie correct.

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

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

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

37 (e) (1) If the Department finds that any dealer or other person liable for the
38 tax imposed by this subtitle intends to depart from the State, remove the dealer's or
39 other person's property from the State, conceal the dealer or other person or their
40 property in the State, or do any other act tending to prejudice or render wholly or
41 partly ineffectual proceedings to collect the tax, the Department shall notify the

1 dealer or other person of its findings and demand an immediate payment of the tax,
2 interest, and penalty.

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

7 (3) If, within 10 days of the service of the notice, the person liable for the
8 tax files with the Department satisfactory evidence that the person is not in default in
9 paying the tax or that the person will duly return and pay the tax, then the tax is not
10 payable before the time otherwise required by this section. However, in each case, the
11 findings of the Department as to the responsibility of the person liable for the tax are
12 final and conclusive.

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

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

37 (G) IF A PERSON OR ENTITY LIABLE FOR THE EXCISE TAX AND FOR THE
38 INTEREST AND PENALTIES OF THE TAX UNDER THIS SUBTITLE IS A CORPORATION
39 OR LIMITED LIABILITY COMPANY OR LIMITED LIABILITY PARTNERSHIP, INCLUDING
40 A LIMITED PARTNERSHIP REGISTERED AS A LIMITED LIABILITY LIMITED
41 PARTNERSHIP, PERSONAL LIABILITY FOR THE EXCISE TAX AND FOR THE INTEREST
42 AND PENALTIES OF THE TAX EXTENDS TO:

43 (1) IN THE CASE OF A CORPORATION:

1 (I) THE PRESIDENT, VICE PRESIDENT, OR TREASURER OF THE
2 CORPORATION; AND

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

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

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

8 (II) IF THE LIMITED LIABILITY COMPANY HAS AN OPERATING
9 AGREEMENT, THOSE INDIVIDUALS WHO MANAGE THE BUSINESS AND AFFAIRS OF
10 THE LIMITED LIABILITY COMPANY; AND

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

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

14 (II) IF THE LIMITED LIABILITY PARTNERSHIP HAS A WRITTEN
15 PARTNERSHIP AGREEMENT, THOSE INDIVIDUALS WHO MANAGE THE BUSINESS AND
16 AFFAIRS OF THE LIMITED LIABILITY PARTNERSHIP.

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

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

22 (2) DIRECTING THE MANAGEMENT OF THE LIMITED LIABILITY
23 COMPANY IN THE SAME MANNER AS A DIRECTOR OF A CORPORATION DIRECTS THE
24 MANAGEMENT OF A CORPORATION; OR

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

27 (I) THE APPROVAL OR DISAPPROVAL OF AMENDMENTS TO THE
28 OPERATING AGREEMENT;

29 (II) THE TERMINATION AND WINDING UP OF THE LIMITED
30 LIABILITY COMPANY;

31 (III) THE SALE, EXCHANGE, LEASE, MORTGAGE, PLEDGE, OR OTHER
32 TRANSFER OF A MATERIAL PORTION OF THE ASSETS OF THE LIMITED LIABILITY
33 COMPANY;

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

1 (V) A CHANGE IN THE NATURE OF THE BUSINESS OF THE LIMITED
2 LIABILITY COMPANY;

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

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

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

7 (IX) ANY MATTER RELATED TO THE BUSINESS OF THE LIMITED
8 LIABILITY COMPANY NOT OTHERWISE ENUMERATED IN THIS SUBSECTION THAT THE
9 OPERATING AGREEMENT STATES MAY BE SUBJECT TO THE APPROVAL OR
10 DISAPPROVAL OF THE MEMBERS.

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

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

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

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

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

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

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

31 (L) AN ASSESSMENT OF TAX UNDER THIS SUBTITLE IS PRIMA FACIE
32 CORRECT.

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

35 (i) Willfully fail to collect the tax;

36 (ii) Willfully fail to remit the tax;

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

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

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

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

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