

SENATE BILL 64

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Q4

2004 Regular Session  
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By: **Chairman, Budget and Taxation Committee (By Request -  
Departmental - Comptroller)**

Introduced and read first time: January 15, 2004

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax - Operating without a License**

3 FOR the purpose of authorizing the Comptroller to take possession of the business  
4 premises, trade fixtures, money, or other personal property of any person who is  
5 engaging in the business of a retail vendor or engaging in the business of an  
6 out-of-state vendor without having been issued a sales and use tax license or  
7 whose sales and use tax license has been suspended or revoked; requiring the  
8 Comptroller to give certain persons an opportunity for a hearing before seizing  
9 certain property under certain circumstances; authorizing certain property  
10 seizures prior to a hearing under certain circumstances; providing for the  
11 disposition of the property seized; expanding the authority for certain  
12 Comptroller's employees to enforce certain provisions; providing for immunity  
13 from liability for certain employees under certain circumstances; and generally  
14 relating to enforcement actions against vendors selling without a sales and use  
15 tax license.

16 BY repealing and reenacting, with amendments,  
17 Article - Tax - General  
18 Section 2-107(a), 2-108, and 11-711(a)  
19 Annotated Code of Maryland  
20 (1997 Replacement Volume and 2003 Supplement)

21 BY adding to  
22 Article - Tax - General  
23 Section 11-713  
24 Annotated Code of Maryland  
25 (1997 Replacement Volume and 2003 Supplement)

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

1 **Article - Tax - General**

2 2-107.

3 (a) Authorized employees of the Field Enforcement Division of the  
4 Comptroller's Office:

5 (1) shall be individuals who are sworn police officers; and

6 (2) have all the powers, duties, and responsibilities of a peace officer for  
7 the purpose of enforcing the laws pertaining to:

8 (i) alcoholic beverage tax;

9 (ii) tobacco tax;

10 (iii) motor fuel tax;

11 (iv) motor carrier tax;

12 (v) motor fuel and lubricants; [and]

13 (vi) transient vendors within the meaning of Subtitle 20A of Title 17  
14 of the Business Regulation Article; AND15 (VII) SEIZURE OF BUSINESS PREMISES, TRADE FIXTURES, MONEY,  
16 OR OTHER PERSONAL PROPERTY UNDER § 11-713 OF THIS ARTICLE.

17 2-108.

18 If, in good faith and with reasonable grounds, the Comptroller or a peace officer  
19 of the State seizes contraband property or a conveyance used to transport contraband  
20 property under § 13-835 of this article OR TAKES POSSESSION OF THE BUSINESS  
21 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY UNDER §  
22 11-713 OF THIS ARTICLE, the Comptroller or peace officer shall have the immunity  
23 from liability described under § 5-523 of the Courts and Judicial Proceedings Article.

24 11-711.

25 (a) Except as otherwise provided in § 10-226 of the State Government Article,  
26 before the Comptroller takes an action under § 11-710 OR § 11-713(A)(1) of this  
27 subtitle, the Comptroller shall give the person against whom the action is  
28 contemplated an opportunity for a hearing before the Comptroller.

29 11-713.

30 (A) (1) SUBJECT TO THE HEARING PROVISIONS OF § 11-711 OF THIS  
31 SUBTITLE, THE COMPTROLLER MAY TAKE POSSESSION OF THE BUSINESS PREMISES,  
32 TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY OF ANY PERSON WHO IS  
33 ENGAGING IN THE BUSINESS OF A RETAIL VENDOR OR ENGAGING IN THE BUSINESS

1 OF AN OUT-OF-STATE VENDOR WITHOUT HAVING BEEN ISSUED A LICENSE BY THE  
2 COMPTROLLER AS REQUIRED UNDER THIS SUBTITLE.

3 (2) IF THE COMPTROLLER HAS REASONABLE CAUSE TO BELIEVE THAT A  
4 PERSON ENGAGING IN THE BUSINESS OF A RETAIL VENDOR OR ENGAGING IN THE  
5 BUSINESS OF AN OUT-OF-STATE VENDOR WITHOUT HAVING BEEN ISSUED A  
6 LICENSE BY THE COMPTROLLER WILL LEAVE THE STATE OR CAUSE THE BUSINESS  
7 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY TO LEAVE  
8 THE STATE BEFORE A HEARING CAN BE HELD UNDER § 11-711 OF THIS SUBTITLE,  
9 THE COMPTROLLER:

10 (I) MAY IMMEDIATELY TAKE POSSESSION OF THE BUSINESS  
11 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY; AND

12 (II) SHALL PROMPTLY HOLD A HEARING UNDER THE PROVISIONS  
13 OF § 11-711 OF THIS SUBTITLE, BUT SUCH HEARING SHALL BE NO LATER THAN 10  
14 BUSINESS DAYS AFTER THE DATE ON WHICH THE PROPERTY WAS TAKEN INTO THE  
15 COMPTROLLER'S POSSESSION.

16 (3) THE COMPTROLLER MAY TAKE POSSESSION OF THE BUSINESS  
17 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY OF ANY  
18 PERSON WHOSE SALES AND USE TAX LICENSE HAS BEEN SUSPENDED OR REVOKED  
19 UNDER § 11-710 OF THIS SUBTITLE.

20 (B) THE COMPTROLLER SHALL:

21 (1) SELL THE PROPERTY AT PUBLIC AUCTION IF, AFTER 45 DAYS FROM  
22 THE DATE THE COMPTROLLER TOOK POSSESSION OF THE PROPERTY, THE PERSON  
23 HAS NOT:

24 (I) BEEN ISSUED A LICENSE BY THE COMPTROLLER AS REQUIRED  
25 UNDER THIS SUBTITLE; OR

26 (II) HAD THE PERSON'S SALES AND USE TAX LICENSE REINSTATED  
27 BY THE COMPTROLLER; OR

28 (2) RETURN THE PROPERTY TO THE PERSON IF, ON OR BEFORE 45 DAYS  
29 AFTER THE DATE THE COMPTROLLER TOOK POSSESSION OF THE PROPERTY, THE  
30 PERSON HAS:

31 (I) BEEN ISSUED A LICENSE BY THE COMPTROLLER AS REQUIRED  
32 UNDER THIS SUBTITLE; OR

33 (II) HAD THE PERSON'S SALES AND USE TAX LICENSE REINSTATED  
34 BY THE COMPTROLLER.

35 (C) (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS  
36 SUBSECTION, THE COMPTROLLER SHALL DISTRIBUTE THE NET PROCEEDS FROM  
37 THE SALE OF PROPERTY IN ACCORDANCE WITH SUBSECTION (B)(1) OF THIS SECTION  
38 IN THE MANNER REQUIRED UNDER TITLE 2 OF THIS ARTICLE FOR DISTRIBUTION OF

1 REVENUES AFTER PAYING THE ITEMS LISTED IN THE FOLLOWING ORDER OF  
2 PRIORITY:

3 (I) TO THE COMPTROLLER, IN AN AMOUNT EQUAL TO THE  
4 EXPENSE OF THE SALE, THE EXPENSE INCURRED IN CONJUNCTION WITH THE  
5 TAKING OF POSSESSION OF THE PROPERTY, AND THE EXPENSE INCURRED WHILE  
6 THE PROPERTY WAS IN THE COMPTROLLER'S CUSTODY;

7 (II) ANY TAX LIEN FILED BY THE STATE; AND

8 (III) ANY BONA FIDE LIEN AGAINST THE PROPERTY.

9 (2) (I) AT ANY TIME WITHIN 3 YEARS OF THE DATE OF THE SALE OF  
10 THE PROPERTY, ANY PERSON SUBMITTING SATISFACTORY PROOF OF THE PERSON'S  
11 RIGHT TO POSSESSION OF THE PROPERTY SHALL BE PAID, WITHOUT INTEREST, THE  
12 NET PROCEEDS DISTRIBUTED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

13 (II) AFTER THE EXPIRATION OF 3 YEARS FROM THE DATE OF THE  
14 SALE, ANY CLAIMS SHALL BE ABSOLUTELY BARRED.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
16 effect July 1, 2004.