

SENATE BILL 64

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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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2004

CHAPTER _____

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 used in the business
5 of any person who is engaging in the business of a retail vendor or engaging in
6 the business of an out-of-state vendor without having been issued a sales and
7 use tax license or whose sales and use tax license has been suspended or revoked
8 under certain circumstances; requiring the Comptroller to assess certain unpaid
9 taxes, interest, and penalties as a certain assessment against certain persons
10 prior to taking possession of certain property; requiring the Comptroller to mail
11 a certain notice to certain persons; providing that certain findings of the
12 Comptroller are final and conclusive; requiring the Comptroller to give certain
13 persons an opportunity for a hearing before seizing certain property under
14 certain circumstances; authorizing certain property seizures prior to a hearing
15 under certain circumstances; requiring the Comptroller to provide certain notice
16 to certain persons in a certain manner prior to taking possession of certain
17 property; providing for the disposition of the property seized; expanding the
18 authority for certain Comptroller's employees to enforce certain provisions;
19 providing for immunity from liability for certain employees under certain
20 circumstances; and generally relating to enforcement actions against vendors
21 selling without a sales and use tax license.

22 BY repealing and reenacting, with amendments,
23 Article - Tax - General
24 Section 2-107(a), 2-108, and 11-711(a)
25 Annotated Code of Maryland

1 (1997 Replacement Volume and 2003 Supplement)

2 BY adding to

3 Article - Tax - General

4 Section 11-713

5 Annotated Code of Maryland

6 (1997 Replacement Volume and 2003 Supplement)

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

9 **Article - Tax - General**

10 2-107.

11 (a) Authorized employees of the ~~Field Enforcement~~ REGULATORY AND
12 ENFORCEMENT Division of the Comptroller's Office:

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

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

16 (i) alcoholic beverage tax;

17 (ii) tobacco tax;

18 (iii) motor fuel tax;

19 (iv) motor carrier tax;

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

21 (vi) transient vendors within the meaning of Subtitle 20A of Title 17
22 of the Business Regulation Article; AND

23 (VII) SEIZURE OF BUSINESS PREMISES, TRADE FIXTURES, MONEY,
24 OR OTHER PERSONAL PROPERTY USED IN THE BUSINESS UNDER § 11-713 OF THIS
25 ARTICLE.

26 2-108.

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

1 11-711.

2 (a) Except as otherwise provided in § 10-226 of the State Government Article,
3 before the Comptroller takes an action under § 11-710 OR § 11-713(A)(~~4~~) of this
4 subtitle, the Comptroller shall give the person against whom the action is
5 contemplated an opportunity for a hearing before the Comptroller.

6 11-713.

7 (A) (~~4~~) SUBJECT TO THE HEARING PROVISIONS OF § 11-711 OF THIS
8 SUBTITLE AND THE PROVISIONS OF THIS SECTION, THE COMPTROLLER MAY TAKE
9 POSSESSION OF THE BUSINESS PREMISES, TRADE FIXTURES, MONEY, OR OTHER
10 PERSONAL PROPERTY USED IN THE BUSINESS OF ANY PERSON WHO IS ENGAGING IN
11 THE BUSINESS OF A RETAIL VENDOR OR ENGAGING IN THE BUSINESS OF AN
12 OUT-OF-STATE VENDOR WITHOUT HAVING BEEN ISSUED A LICENSE BY THE
13 COMPTROLLER AS REQUIRED UNDER THIS SUBTITLE.

14 (B) (1) PRIOR TO TAKING POSSESSION OF ANY PROPERTY USED IN THE
15 BUSINESS, THE COMPTROLLER SHALL ASSESS ANY UNPAID TAX, INTEREST, AND
16 PENALTY AS A JEOPARDY ASSESSMENT.

17 (2) THE COMPTROLLER SHALL MAIL TO THE PERSON REQUIRED TO PAY
18 THE TAX A NOTICE OF JEOPARDY ASSESSMENT THAT STATES:

19 (I) THE FINDINGS ABOUT THE JEOPARDY OF TAX COLLECTION;

20 (II) THE AMOUNT OF THE ASSESSMENT; AND

21 (III) A DEMAND THAT THE PERSON IMMEDIATELY PAY THE
22 ASSESSMENT OR SUBMIT EVIDENCE THAT COLLECTION OF THE TAX IS NOT IN
23 JEOPARDY.

24 (3) THE FINDINGS OF THE COMPTROLLER ABOUT THE JEOPARDY OF
25 TAX COLLECTION SHALL BE FINAL AND CONCLUSIVE.

26 (4) IF, WITHIN 10 DAYS AFTER A NOTICE OF JEOPARDY IS MAILED, A
27 PERSON FAILS TO COMPLY WITH THE NOTICE, THE COMPTROLLER MAY TAKE
28 POSSESSION OF THE PROPERTY AS AUTHORIZED UNDER SUBSECTION (A) OF THIS
29 SECTION.

30 (~~2~~) (C) IF THE COMPTROLLER HAS REASONABLE CAUSE TO BELIEVE
31 THAT A PERSON ENGAGING IN THE BUSINESS OF A RETAIL VENDOR OR ENGAGING IN
32 THE BUSINESS OF AN OUT-OF-STATE VENDOR WITHOUT HAVING BEEN ISSUED A
33 LICENSE BY THE COMPTROLLER WILL LEAVE THE STATE OR CAUSE THE BUSINESS
34 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY USED IN THE
35 BUSINESS TO LEAVE THE STATE BEFORE A HEARING CAN BE HELD UNDER § 11-711
36 OF THIS SUBTITLE, THE COMPTROLLER:

1 ~~(A)~~ (1) MAY IMMEDIATELY TAKE POSSESSION OF THE BUSINESS
2 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY USED IN THE
3 BUSINESS; AND

4 ~~(B)~~ (2) SHALL PROMPTLY HOLD A HEARING UNDER THE
5 PROVISIONS OF § 11-711 OF THIS SUBTITLE, BUT SUCH HEARING SHALL BE NO LATER
6 THAN 10 BUSINESS DAYS AFTER THE DATE ON WHICH THE PROPERTY WAS TAKEN
7 INTO THE COMPTROLLER'S POSSESSION.

8 ~~(C)~~ (D) (1) ~~THE~~ SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF
9 THIS SUBSECTION, THE COMPTROLLER MAY TAKE POSSESSION OF THE BUSINESS
10 PREMISES, TRADE FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY USED IN THE
11 BUSINESS OF ANY PERSON WHOSE SALES AND USE TAX LICENSE HAS BEEN
12 SUSPENDED OR REVOKED UNDER § 11-710 OF THIS SUBTITLE.

13 (2) PRIOR TO TAKING POSSESSION OF THE BUSINESS PREMISES, TRADE
14 FIXTURES, MONEY, OR OTHER PERSONAL PROPERTY USED IN THE BUSINESS, THE
15 COMPTROLLER SHALL PROVIDE NOTICE TO THE PERSON THAT THE PROPERTY MAY
16 BE SEIZED BY THE COMPTROLLER BY:

17 (I) PERSONALLY SERVING NOTICE ON THE PERSON;

18 (II) IN THE CASE OF A CORPORATION, LIMITED LIABILITY
19 COMPANY, OR LIMITED LIABILITY PARTNERSHIP, PERSONALLY SERVING NOTICE ON
20 A PERSON DESCRIBED IN § 11-601(D) OF THIS TITLE AS BEING PERSONALLY LIABLE
21 FOR ANY UNPAID SALES AND USE TAX; OR

22 (III) POSTING SUCH NOTICE ON THE BUSINESS PREMISES.

23 ~~(B)~~ (E) THE COMPTROLLER SHALL:

24 (1) ~~SELL THE PROPERTY~~ ANY TRADE FIXTURE OR OTHER PERSONAL
25 PROPERTY USED IN THE BUSINESS AT PUBLIC AUCTION IF, AFTER 45 DAYS FROM
26 THE DATE THE COMPTROLLER TOOK POSSESSION OF THE PROPERTY, THE PERSON
27 HAS NOT:

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

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

32 (2) RETURN THE PROPERTY TO THE PERSON IF, ON OR BEFORE 45 DAYS
33 AFTER THE DATE THE COMPTROLLER TOOK POSSESSION OF THE PROPERTY, THE
34 PERSON HAS:

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

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

3 ~~(C)~~ (F) (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS
4 SUBSECTION, THE COMPTROLLER SHALL DISTRIBUTE THE NET PROCEEDS FROM
5 THE SALE OF PROPERTY IN ACCORDANCE WITH SUBSECTION ~~(B)(4)~~ (E)(1) OF THIS
6 SECTION IN THE MANNER REQUIRED UNDER TITLE 2 OF THIS ARTICLE FOR
7 DISTRIBUTION OF REVENUES AFTER PAYING THE ITEMS LISTED IN THE FOLLOWING
8 ORDER OF PRIORITY:

9 (I) TO THE COMPTROLLER, IN AN AMOUNT EQUAL TO THE
10 EXPENSE OF THE SALE, THE EXPENSE INCURRED IN CONJUNCTION WITH THE
11 TAKING OF POSSESSION OF THE PROPERTY, AND THE EXPENSE INCURRED WHILE
12 THE PROPERTY WAS IN THE COMPTROLLER'S CUSTODY;

13 (II) ANY CLAIM DESCRIBED IN § 13-801 OF THIS ARTICLE;

14 ~~(H)~~ (III) ANY TAX LIEN FILED BY THE STATE; AND

15 ~~(H)~~ (IV) ANY OTHER BONA FIDE LIEN AGAINST THE PROPERTY.

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

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

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