

HOUSE BILL 821

Q5

71r1997

By: **Delegate Hixson**

Introduced and read first time: February 9, 2007

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Transportation – Tax Revenues**

3 FOR the purpose of requiring the Comptroller to distribute certain sales and use tax
4 collected on the sale of motor fuel to the Gasoline and Motor Vehicle Revenue
5 Account of the Transportation Trust Fund; altering the motor fuel tax rates;
6 repealing an exemption under the sales and use tax for the sale of motor fuel
7 that is subject to the motor fuel tax; providing an exemption under the sales and
8 use tax for certain motor fuel that is exempt from the motor fuel tax; altering
9 the rate of the motor carrier tax to include a certain per gallon sales and use tax
10 equivalent rate; altering a credit allowed against the motor carrier tax to
11 include certain sales and use tax that the motor carrier paid on motor fuel
12 bought in the State; altering certain exemptions under the sales and use tax
13 relating to motor fuel; requiring a buyer to pay the sales and use tax on certain
14 sales of motor fuel that are exempt from the tax and allowing the buyer to file a
15 claim for refund of the tax paid; providing for the prepayment of the sales and
16 use tax for motor fuel by a person who is required to pay the motor fuel tax for
17 that fuel and for the collection of the amounts prepaid from certain purchasers
18 of the motor fuel; requiring certain persons to file certain reports or provide
19 certain invoices or other evidence of collection of the prepayment amounts;
20 establishing a certain prepayment rate for a certain period; authorizing the
21 Comptroller to determine certain prepayment rates; altering the composition of
22 the Gasoline and Motor Vehicle Revenue Account in the Transportation Trust
23 Fund; providing for the payment of certain taxes on certain tax-paid motor fuel
24 held as of a certain date; and generally relating to certain taxes and the
25 distribution of certain tax revenues.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
 2 Article – Tax – General
 3 Section 2–1302.2, 11–101(n–1), 11–408(d), and 11–409
 4 Annotated Code of Maryland
 5 (2004 Replacement Volume and 2006 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Tax – General
 8 Section 2–1303, 9–204, 9–214, 9–305, 11–208(c), 11–221(a), 11–601(b)(3), and
 9 13–901(g)
 10 Annotated Code of Maryland
 11 (2004 Replacement Volume and 2006 Supplement)

12 BY repealing and reenacting, without amendments,
 13 Article – Tax – General
 14 Section 11–301 and 11–405
 15 Annotated Code of Maryland
 16 (2004 Replacement Volume and 2006 Supplement)

17 BY repealing and reenacting, with amendments,
 18 Article – Transportation
 19 Section 8–402
 20 Annotated Code of Maryland
 21 (2001 Replacement Volume and 2006 Supplement)

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 **2–1302.2.**

26 **AFTER MAKING THE DISTRIBUTIONS REQUIRED UNDER §§ 2–1301**
 27 **THROUGH 2–1302.1 OF THIS SUBTITLE, THE COMPTROLLER MONTHLY SHALL**
 28 **DISTRIBUTE THE REMAINING REVENUE FROM THE SALES AND USE TAX**
 29 **COLLECTED ON THE SALE OF MOTOR FUEL TO THE GASOLINE AND MOTOR**
 30 **VEHICLE REVENUE ACCOUNT IN THE TRANSPORTATION TRUST FUND.**

31 2–1303.

32 After making the distributions required under §§ 2–1301 through [2–1302.1]
 33 **2–1302.2** of this subtitle, the Comptroller shall pay:

1 (1) revenues from the hotel surcharge into the Dorchester County
2 Economic Development Fund established under Article 83A, § 5–216 of the Code; and

3 (2) the remaining sales and use tax revenue into the General Fund of
4 the State.

5 9–204.

6 (A) For each type of motor fuel used in the operation of a commercial motor
7 vehicle on a highway in this State, the motor carrier tax rate is **THE SUM, FOR EACH**
8 **GALLON OF FUEL USED, OF:**

9 (1) the motor fuel tax rate for that type of motor fuel in effect when
10 the return period begins[, for each gallon of motor fuel used]; **AND**

11 (2) **THE PER GALLON SALES AND USE TAX EQUIVALENT RATE FOR**
12 **THAT TYPE OF MOTOR FUEL, AS DETERMINED BY THE COMPTROLLER, IN**
13 **EFFECT WHEN THE RETURN PERIOD BEGINS.**

14 (B) (1) **FOR EACH TYPE OF MOTOR FUEL, ON OR BEFORE THE 15TH**
15 **DAY OF MARCH, JUNE, SEPTEMBER, AND DECEMBER OF EACH YEAR, THE**
16 **COMPTROLLER SHALL DETERMINE A PER GALLON SALES AND USE TAX**
17 **EQUIVALENT RATE TO BE EFFECTIVE FOR THE CALENDAR QUARTER BEGINNING**
18 **ON THE FIRST DAY OF THE FOLLOWING MONTH.**

19 (2) **THE PER GALLON SALES AND USE TAX EQUIVALENT RATE**
20 **SHALL BE BASED ON THE STATE SALES AND USE TAX IMPOSED ON THE SALE OF**
21 **A GALLON OF THAT TYPE OF MOTOR FUEL, USING THE ARITHMETIC AVERAGE**
22 **SELLING PRICE, EXCLUDING SALES TAX, FOR THE PRECEDING CALENDAR**
23 **QUARTER AS DETERMINED BY THE COMPTROLLER.**

24 9–214.

25 (a) A motor carrier may claim a credit against the motor carrier tax to the
26 extent of the motor fuel tax **AND THE SALES AND USE TAX** that the motor carrier paid
27 on motor fuel bought in the State.

28 (b) If the credit allowed under subsection (a) of this section for a return
29 period exceeds the motor carrier tax due in the period, then, in accordance with
30 regulations of the Comptroller, the motor carrier may:

1 (1) apply the excess credit to the motor carrier tax due within the next
2 2 years; or

3 (2) apply for a refund of the excess credit under § 13-901 of this
4 article.

5 9-305.

6 The motor fuel tax rate is:

7 (1) [7] 10 cents for each gallon of aviation gasoline;

8 (2) [23.5] 33.5 cents for each gallon of gasoline other than aviation
9 gasoline;

10 (3) [24.25] 34.25 cents for each gallon of special fuel other than
11 clean-burning fuel or turbine fuel;

12 (4) [7] 10 cents for each gallon of turbine fuel; and

13 (5) [23.5] 33.5 cents for each gasoline-equivalent gallon of
14 clean-burning fuel except electricity.

15 11-101.

16 **(N-1) "VENDING OR OTHER SELF-SERVICE MACHINE" INCLUDES A**
17 **GASOLINE OR SPECIAL FUEL PUMP AT A RETAIL SERVICE STATION.**

18 11-208.

19 (c) The sales and use tax does not apply:

20 (1) to a sale of an aircraft, motor vehicle, railroad rolling stock, or
21 vessel that is used principally to cross State lines in interstate or foreign commerce;

22 (2) to a sale of a replacement part or other tangible personal property,
23 **NOT INCLUDING MOTOR FUEL**, to be used physically in, on, or by a conveyance
24 described in item (1) of this subsection; or

25 (3) except for a rental, to a sale of a motor vehicle, other than a house
26 or office trailer, that will be titled or registered in another state.

1 11-221.

2 (a) The sales and use tax does not apply to:

3 (1) a sale of an admission by a person whose gross receipts from the
4 sale are subject to the admissions and amusement tax;

5 (2) a sale of a communication service, other than a taxable service,
6 rendered by a person whose charge for a communication service is or would be subject
7 to the federal excise tax as described in § 4251 of the Internal Revenue Code in effect
8 on July 1, 1979;

9 (3) a [sale] USE of a motor fuel that is subject to [the motor fuel tax
10 or] the motor carrier tax;

11 (4) **A SALE OF A MOTOR FUEL THAT IS EXEMPT FROM THE MOTOR**
12 **FUEL TAX UNDER § 9-303(C) OF THIS ARTICLE;**

13 [(4)] (5) except for a rental, a sale of a motor vehicle, other than a
14 house or office trailer, that is subject to the motor vehicle excise tax under § 13-809 or
15 § 13-811 of the Transportation Article;

16 [(5)] (6) a lease of a motor vehicle that is leased for a period of at
17 least 1 year;

18 [(6)] (7) a rental of a motion picture, motion picture trailer, or
19 advertising poster for display on theater premises by a person whose gross receipts
20 from the activity related to the rental is subject to the admissions and amusement tax;
21 or

22 [(7)] (8) except for a rental, a sale of a vessel that is subject to the
23 excise tax under § 8-716 of the Natural Resources Article.

24 11-301.

25 The sales and use tax is computed on:

26 (1) the taxable price of each separate sale;

27 (2) if a combined sale is made, the combined taxable price of all retail
28 sales on the same occasion by the same vendor to the same buyer; or

1 (3) if retail sales of tangible personal property or a taxable service are
2 made through vending or other self-service machines, 95.25% of the gross receipts
3 from the retail sales.

4 11-405.

5 A vendor who sells tangible personal property or a taxable service through a
6 vending or other self-service machine:

7 (1) shall pay the sales and use tax to the Comptroller; and

8 (2) may not collect the sales and use tax from the buyer as a
9 separately stated item.

10 11-408.

11 **(D) (1) EXCEPT AS PROVIDED BY THE COMPTROLLER BY**
12 **REGULATION AND EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
13 **SUBSECTION, IF THE SALE OF MOTOR FUEL IS EXEMPT UNDER THIS TITLE:**

14 **(I) THE SALES AND USE TAX ON THE SALE OF THE MOTOR**
15 **FUEL SHALL BE PAID WHEN THE SALE IS MADE; AND**

16 **(II) THE BUYER WHO PAYS THE SALES AND USE TAX MAY**
17 **FILE A CLAIM FOR A REFUND WITH THE COMPTROLLER.**

18 **(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO**
19 **MOTOR FUEL THAT IS EXEMPT FROM THE MOTOR FUEL TAX.**

20 11-409.

21 **(A) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A**
22 **PERSON WHO IS REQUIRED TO PAY TO THE COMPTROLLER THE MOTOR FUEL**
23 **TAX ON MOTOR FUEL SHALL PREPAY THE SALES AND USE TAX FOR THAT MOTOR**
24 **FUEL TO THE COMPTROLLER AS PROVIDED IN THIS SECTION.**

25 **(2) THE PREPAYMENT OF SALES AND USE TAX FOR MOTOR FUEL**
26 **REQUIRED UNDER THIS SECTION SHALL BE PAID WHEN THE MOTOR FUEL TAX**
27 **ON THAT MOTOR FUEL IS DUE.**

1 (3) (I) A PERSON REQUIRED TO PREPAY THE SALES AND USE
2 TAX FOR MOTOR FUEL SHALL REPORT AND PAY THE PREPAYMENT AMOUNTS TO
3 THE COMPTROLLER FOR THE PERIOD IN WHICH THE MOTOR FUEL BECOMES
4 SUBJECT TO THE MOTOR FUEL TAX.

5 (II) THE REPORT REQUIRED UNDER THIS PARAGRAPH
6 SHALL BE IN THE FORM REQUIRED BY THE COMPTROLLER AND SHALL INCLUDE
7 THE INFORMATION REQUIRED BY THE COMPTROLLER.

8 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
9 SUBSECTION:

10 (I) IF A PERSON WHO IS REQUIRED TO PREPAY THE SALES
11 AND USE TAX TO THE COMPTROLLER FOR MOTOR FUEL SELLS THE MOTOR
12 FUEL, THE PERSON SHALL COLLECT THE AMOUNT OF THE PREPAYMENT FROM
13 THE PURCHASER; AND

14 (II) ON EACH SUBSEQUENT SALE OF MOTOR FUEL FOR
15 WHICH THE SALES AND USE TAX HAS BEEN PREPAID UNDER THIS SECTION,
16 EACH SELLER SHALL COLLECT THE AMOUNT OF THE PREPAYMENT FROM THE
17 PURCHASER.

18 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A
19 SELLER WHO MAKES A RETAIL SALE OF THE MOTOR FUEL.

20 (3) EACH SELLER OTHER THAN A SELLER WHO MAKES A RETAIL
21 SALE OF THE MOTOR FUEL SHALL PROVIDE THE PURCHASER WITH AN INVOICE
22 FOR, OR OTHER EVIDENCE OF, THE COLLECTION OF THE PREPAYMENT
23 AMOUNTS WHICH SHALL BE SEPARATELY STATED.

24 (C) (1) A PERSON WHO HAS PREPAID THE SALES AND USE TAX TO THE
25 COMPTROLLER UNDER SUBSECTION (A) OF THIS SECTION OR HAS PAID THE
26 PREPAYMENT TO A SELLER UNDER SUBSECTION (B) OF THIS SECTION IS
27 ALLOWED A CREDIT:

28 (I) IF THE PERSON MAKES A RETAIL SALE OF THE MOTOR
29 FUEL, AGAINST THE PERSON'S SALES AND USE TAX LIABILITY FOR THE PERIOD
30 IN WHICH THE PERSON MAKES A RETAIL SALE OF THE MOTOR FUEL; OR

1 **(II) IF THE PERSON SUBSEQUENTLY USES THE MOTOR FUEL,**
2 **AGAINST THE PERSON'S SALES AND USE TAX LIABILITY FOR THE PERIOD IN**
3 **WHICH THE PERSON USES THE MOTOR FUEL.**

4 **(2) TO BE ENTITLED TO THE CREDIT, THE PERSON WHO MAKES A**
5 **RETAIL SALE OF THE MOTOR FUEL OR WHO USES THE MOTOR FUEL SHALL**
6 **RETAIN FOR INSPECTION BY THE COMPTROLLER ANY RECEIPTS, INVOICES, OR**
7 **OTHER DOCUMENTS SHOWING THE AMOUNT OF SALES AND USE TAX PREPAID TO**
8 **A SELLER, TOGETHER WITH THE EVIDENCE OF PAYMENT.**

9 **(D) (1) (I) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS**
10 **SUBSECTION, THE SALES AND USE TAX PREPAYMENT REQUIRED UNDER THIS**
11 **SECTION IS AN AMOUNT PER GALLON OF MOTOR FUEL AS ESTABLISHED BY THE**
12 **COMPTROLLER.**

13 **(II) THE COMPTROLLER SHALL DETERMINE THE SALES AND**
14 **USE TAX PREPAYMENT RATE FOR EACH FISCAL YEAR BASED ON THE STATE**
15 **SALES AND USE TAX RATE APPLIED TO THE ARITHMETIC AVERAGE RETAIL**
16 **SELLING PRICE, EXCLUDING THE SALES AND USE TAX, OF GASOLINE IN THE**
17 **STATE, AS DETERMINED BY THE COMPTROLLER FOR THE CALENDAR YEAR**
18 **THAT ENDED PRIOR TO THE BEGINNING OF THE FISCAL YEAR.**

19 **(III) THE PREPAYMENT RATE SHALL BE ROUNDED TO THE**
20 **NEAREST HALF CENT FOR EACH GALLON.**

21 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE**
22 **PREPAYMENT RATE FOR THE PERIOD FROM JULY 1, 2007 THROUGH JUNE 30,**
23 **2008 SHALL BE 11 CENTS FOR EACH GALLON OF MOTOR FUEL.**

24 **(3) THE COMPTROLLER MAY ADJUST THE PREPAYMENT RATE OR**
25 **MAY ESTABLISH SEPARATE PREPAYMENT RATES FOR DIFFERENT TYPES OF**
26 **MOTOR FUEL IF:**

27 **(I) AS A RESULT OF SIGNIFICANT INCREASES OR**
28 **DECREASES IN THE PRICE OF MOTOR FUEL, THE ESTABLISHED PREPAYMENT**
29 **RATE RESULTS IN PREPAYMENTS THAT ARE CONSISTENTLY HIGHER OR**
30 **SIGNIFICANTLY LOWER THAN THE SALES AND USE TAX IMPOSED ON THE SALE**
31 **OR USE OF THE MOTOR FUEL; OR**

1 (2) Except as otherwise provided by law, 80 percent of the vehicle
2 titling tax;

3 (3) Except for revenues collected under Parts III and IV of Title 13,
4 Subtitle 9 of this article, vehicle registration fees;

5 (4) The revenue disbursed to this account under § 2-614 of the
6 Tax – General Article; [and]

7 (5) 80 percent of the funds distributed on short-term vehicle rentals
8 under § 2-1302.1 of the Tax – General Article to the Transportation Trust Fund from
9 the sales and use tax; **AND**

10 **(6) THE SALES AND USE TAX REVENUE DISTRIBUTED TO THIS**
11 **ACCOUNT UNDER § 2-1302.2 OF THE TAX – GENERAL ARTICLE.**

12 (c) (1) During each fiscal year, the Account shall be used to pay the
13 allocations of highway user revenues provided by this subtitle to the counties,
14 municipalities, and Baltimore City; and

15 (2) The balance of the Account may be used as provided in § 3-216 of
16 this article.

17 SECTION 2. AND BE IT FURTHER ENACTED, That each person holding
18 tax-paid motor fuel, excluding aviation fuel, for sale at the start of business on July 1,
19 2007, shall compile and file an inventory of the motor fuel held at the close of business
20 on June 30, 2007, and remit within 30 days:

21 (1) any additional motor fuel tax that is due on the motor fuel; and

22 (2) the prepayment of the sales and use tax for that motor fuel as
23 required under § 11-409 of the Tax – General Article, as enacted by Section 1 of this
24 Act.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 July 1, 2007.