

SENATE BILL 14

Q3, Q4, Q7

8lr4568

By: **Senator Rosapepe**

Introduced and read first time: October 29, 2007

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Reduction of Tax Evasion**

3 FOR the purpose of requiring certain transferors of certain property to pay certain
4 amounts before recording certain documents under certain circumstances;
5 altering a certain exception to a certain addition modification required under
6 the income tax under certain circumstances; exempting from the sales and use
7 tax the sale of certain cigarettes; altering the tobacco tax rate; requiring certain
8 employers to file a sales and use tax return; including certain types of payments
9 in a certain offset program; requiring certain tax clearance verification before
10 the renewal of a motor vehicle registration; requiring certain persons to certify
11 or verify the payment of certain taxes and contributions prior to issuing or
12 renewing a certain license; providing for the effective date of this Act; and
13 generally relating to tax compliance.

14 BY repealing and reenacting, with amendments,
15 Article – Tax – General
16 Section 10–306.1(a) and (c)(3), 10–912(e) and (f), 11–221(a), 12–105(a), and
17 13–930(e)
18 Annotated Code of Maryland
19 (2004 Replacement Volume and 2007 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Tax – General
22 Section 10–912(a) and (c)
23 Annotated Code of Maryland
24 (2004 Replacement Volume and 2007 Supplement)

25 BY adding to
26 Article – Tax – General
27 Section 10–912(c–1) and 11–501(c)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2004 Replacement Volume and 2007 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article – Transportation
4 Section 1–103(b)
5 Annotated Code of Maryland
6 (2001 Replacement Volume and 2007 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Transportation
9 Section 1–103(c)
10 Annotated Code of Maryland
11 (2001 Replacement Volume and 2007 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Business Occupations and Professions
14 Section 1–204
15 Annotated Code of Maryland
16 (2004 Replacement Volume and 2007 Supplement)

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

19 **Article – Tax – General**

20 10–306.1.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) “Aggregate effective tax rate” means the sum of the effective rates
23 of tax imposed by this State, other states or possessions of the United States, and
24 foreign nations that have entered into comprehensive tax treaties with the United
25 States government, where a related member receiving a payment of interest expense
26 or intangible expense is subject to tax and where the measure of the tax imposed
27 included the payment.

28 (3) [“Bank” means:

29 (i) a bank holding company as defined in the federal Bank
30 Holding Company Act of 1956, as amended, or a bank, trust company, savings bank, or
31 savings and loan association incorporated or chartered under the laws of this State,
32 another state, or the United States; or

33 (ii) a subsidiary or affiliate of an entity described in item (i) of
34 this paragraph.

1 (4)] “Effective rate of tax imposed” means, as to any state, possession of
2 the United States, or foreign nation, the maximum statutory tax rate imposed by the
3 state, possession, or foreign nation multiplied by the applicable apportionment rate.

4 [(5)] (4) “Intangible expense” means:

5 (i) an expense, loss, or cost for, related to, or in connection
6 directly or indirectly with the direct or indirect acquisition, use, maintenance,
7 management, ownership, sale, exchange, or any other disposition of intangible
8 property, to the extent the expense, loss, or cost is allowed as a deduction or cost in
9 determining taxable income for the taxable year under the Internal Revenue Code;

10 (ii) a loss related to or incurred in connection directly or
11 indirectly with factoring transactions or discounting transactions;

12 (iii) a royalty, patent, technical, or copyright fee;

13 (iv) a licensing fee; or

14 (v) any other similar expense or cost.

15 [(6)] (5) “Intangible property” means patents, patent applications,
16 trade names, trademarks, service marks, copyrights, and similar types of intangible
17 assets.

18 [(7)] (6) “Interest expense” means an amount directly or indirectly
19 allowed as a deduction under § 163 of the Internal Revenue Code for purposes of
20 determining taxable income under the Internal Revenue Code.

21 [(8)] (7) “Related entity” means a person that, under the attribution
22 rules of § 318 of the Internal Revenue Code, is:

23 (i) a stockholder who is an individual or a member of the
24 stockholder’s family enumerated in § 318 of the Internal Revenue Code, if the
25 stockholder and the members of the stockholder’s family own directly, indirectly,
26 beneficially, or constructively, in the aggregate, at least 50% of the value of the
27 taxpayer’s outstanding stock;

28 (ii) a stockholder or a stockholder’s partnership, limited liability
29 company, estate, trust, or corporation, if the stockholder and the stockholder’s
30 partnership, limited liability company, estate, trust, or corporation own directly,
31 indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of
32 the taxpayer’s outstanding stock; or

33 (iii) a corporation or a party related to the corporation in a
34 manner that would require an attribution of stock from the corporation to the party or
35 from the party to the corporation under the attribution rules of § 318 of the Internal

1 Revenue Code, if the taxpayer owns directly, indirectly, beneficially, or constructively,
2 at least 50% of the value of the corporation's outstanding stock.

3 [(9)] (8) “Related member” means a person that, with respect to the
4 taxpayer during all or any portion of the taxable year, is:

5 (i) a related entity;

6 (ii) a component member, as defined in § 1563(b) of the Internal
7 Revenue Code; or

8 (iii) a person to or from whom there is attribution of stock
9 ownership in accordance with § 1563(e) of the Internal Revenue Code.

10 (c) The addition required under subsection (b) of this section does not apply
11 to any portion of the interest expense or intangible expense to the extent that the
12 corporation establishes, as determined by the Comptroller, that:

13 (3) (i) during the same taxable year, the related member directly
14 or indirectly paid, accrued, or incurred the interest expense or intangible expense to a
15 person who is not a related member; **OR**

16 (ii) 1. the related member was subject to a tax measured by
17 its net income or receipts in this State, another state or possession of the United
18 States, or a foreign nation that has entered into a comprehensive tax treaty with the
19 United States government;

20 2. a measure of the tax imposed by this State, another
21 state or possession of the United States, or a foreign nation that has entered into a
22 comprehensive tax treaty with the United States government included the interest
23 expense or intangible expense received by the related member from the corporation;
24 and

25 3. the aggregate effective tax rate imposed on the
26 amounts received by the related member is equal to or greater than 4%]; or

27 (iii) in the case of an interest expense, the corporation and the
28 related member are banks].

29 10-912.

30 (a) (1) In this section the following words have the meanings indicated.

31 (2) (i) Except as provided in subparagraph (ii) of this paragraph,
32 “net proceeds” means the total sales price paid to the transferor less:

1 1. debts of the transferor secured by a mortgage or other
2 lien on the property being transferred that are being paid upon the sale or exchange of
3 the property; and

4 2. other expenses of the transferor arising out of the sale
5 or exchange of the property and disclosed on a settlement statement prepared in
6 connection with the sale or exchange of the property, not including adjustments in
7 favor of the transferee.

8 (ii) “Net proceeds” does not include adjustments in favor of the
9 transferor that are disclosed on a settlement statement prepared in connection with
10 the sale or exchange of the property.

11 (3) “Nonresident entity” means an entity that:

12 (i) is not formed under the laws of the State; and

13 (ii) is not qualified by or registered with the Department of
14 Assessments and Taxation to do business in the State.

15 (4) “Resident entity” means an entity that:

16 (i) is formed under the laws of the State; or

17 (ii) is formed under the laws of another state and is qualified by
18 or registered with the Department of Assessments and Taxation to do business in the
19 State.

20 (5) “Total payment” means the net proceeds of a sale actually paid to a
21 transferor, including the fair market value of any property transferred to the
22 transferor.

23 (6) “Transfer pursuant to a deed in lieu of foreclosure” includes:

24 (i) a transfer by the owner of the property to:

25 1. with respect to a deed in lieu of foreclosure of a
26 mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of
27 the mortgagee or assignee of the mortgage;

28 2. with respect to a deed in lieu of foreclosure of a deed
29 of trust, the holder of the debt or other obligation secured by the deed of trust or any
30 designee, nominee, or assignee of the holder of the debt or other obligation secured by
31 the deed of trust;

32 3. with respect to a deed in lieu of foreclosure of any
33 other lien instrument, the holder of the debt or other obligation secured by the lien

1 instrument or any designee, nominee, or assignee of the holder of the debt secured by
2 the lien instrument; and

3 (ii) a transfer by any of the persons described in item (i) of this
4 paragraph to a subsequent purchaser for value.

5 (7) "Transfer pursuant to a foreclosure of a mortgage, deed of trust, or
6 other lien instrument" includes:

7 (i) with respect to the foreclosure of a mortgage:

8 1. a transfer by the mortgagee, the assignee of the
9 mortgage, the attorney named in the mortgage, or the attorney or trustee conducting a
10 foreclosure sale pursuant to the mortgage to:

11 A. the mortgagee or the assignee of the mortgage;

12 B. any designee, nominee, or assignee of the mortgagee
13 or assignee of the mortgage; or

14 C. any purchaser, substituted purchaser, or assignee of
15 any purchaser or substituted purchaser of the foreclosed property; and

16 2. a transfer by any of the persons described in item 1 of
17 this subparagraph to a subsequent purchaser for value;

18 (ii) with respect to the foreclosure of a deed of trust:

19 1. a transfer by the trustees, successor trustees,
20 substituted trustees under the deed of trust, or trustees conducting a foreclosure sale
21 pursuant to the deed of trust to:

22 A. the holder of the debt or other obligation secured by
23 the deed of trust;

24 B. any designee, nominee, or assignee of the holder of the
25 debt secured by the deed of trust; or

26 C. any purchaser, substituted purchaser, or assignee of
27 any purchaser or substituted purchaser of the foreclosed property; and

28 2. a transfer by any of the persons described in item 1 of
29 this subparagraph to a subsequent purchaser for value; and

30 (iii) with respect to the foreclosure of any other lien instrument:

31 1. a transfer by the party authorized to make the sale to:

1 A. the holder of the debt or other obligation secured by
2 the lien instrument;

3 B. any designee, nominee, or assignee of the holder of the
4 debt secured by the lien instrument; or

5 C. any purchaser, substituted purchaser, or assignee of
6 any purchaser or substituted purchaser of the foreclosed property; and

7 2. a transfer by any of the persons described in item 1 of
8 this subparagraph to a subsequent purchaser for value.

9 (c) Except as otherwise provided in this section, in a sale or exchange of real
10 property and associated tangible personal property owned by a nonresident or
11 nonresident entity, the deed or other instrument of writing that effects a change of
12 ownership on the assessment books under the Tax – Property Article may not be
13 recorded with the clerk of the circuit court for a county or filed with the Department of
14 Assessments and Taxation unless payment is made to the clerk of the circuit court for
15 a county or the Department of Assessments and Taxation in an amount equal to:

16 (1) the sum of the rate of the tax imposed under § 10–106.1 of this title
17 and the top marginal State income tax rate for individuals under § 10–105(a) of this
18 title, applied to the total payment to a nonresident; or

19 (2) 7% of the total payment to a nonresident entity.

20 **(C–1) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN A**
21 **SALE OR EXCHANGE OF REAL PROPERTY AND ASSOCIATED TANGIBLE PERSONAL**
22 **PROPERTY OWNED BY A RESIDENT, IF THE TOTAL PAYMENT IS GREATER THAN**
23 **\$250,000, THE DEED OR OTHER INSTRUMENT OF WRITING THAT EFFECTS A**
24 **CHANGE OF OWNERSHIP ON THE ASSESSMENT BOOKS UNDER THE**
25 **TAX – PROPERTY ARTICLE MAY NOT BE RECORDED WITH THE CLERK OF THE**
26 **CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT OF**
27 **ASSESSMENTS AND TAXATION UNLESS PAYMENT IS MADE TO THE CLERK OF**
28 **THE CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS**
29 **AND TAXATION IN AN AMOUNT EQUAL TO 4.75% OF THE AMOUNT BY WHICH THE**
30 **TOTAL PAYMENT EXCEEDS \$250,000.**

31 **(2) IF THE TRANSFEROR CERTIFIES UNDER PENALTIES OF**
32 **PERJURY THAT THE TRANSFEROR WILL FILE A JOINT INCOME TAX RETURN, THE**
33 **PAYMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION:**

34 **(I) IS REQUIRED ONLY IF THE TOTAL PAYMENT EXCEEDS**
35 **\$500,000; AND**

1 **(II) SHALL EQUAL 4.75% OF THE AMOUNT BY WHICH THE**
2 **TOTAL PAYMENT EXCEEDS \$500,000.**

3 (e) (1) Except as provided in this section, the amounts described in
4 [subsection] **SUBSECTIONS (c) AND (C-1)** of this section shall be collected by the clerk
5 of the circuit court for a county or the Department of Assessments and Taxation when
6 the deed or other instrument of writing is presented for recordation or filing.

7 (2) Within 30 business days after the date the amount payable under
8 [subsection] **SUBSECTIONS (c) AND (C-1)** of this section is paid, the clerk of the
9 circuit court for the county or the Department of Assessments and Taxation shall pay
10 over to the Comptroller the amount collected under [subsection] **SUBSECTIONS (c)**
11 **AND (C-1)** of this section as prescribed by the Comptroller.

12 (f) (1) Amounts collected under [subsection] **SUBSECTIONS (c) AND**
13 **(C-1)** of this section and paid over to the Comptroller under subsection (e) of this
14 section shall be deemed to have been paid to the Comptroller on behalf of the
15 transferor from whom the amounts were withheld.

16 (2) The transferor shall be credited with having paid the amounts for
17 the taxable year in which the transaction that is the subject of the tax occurred.

18 11-221.

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

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

22 (2) **A SALE OF CIGARETTES ON WHICH THE TOBACCO TAX IS PAID;**

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

27 [(3)] (4) a sale of a motor fuel that is subject to the motor fuel tax or
28 the motor carrier tax;

29 [(4)] (5) except for a rental, a sale of a motor vehicle, other than a
30 house or office trailer, that is subject to the motor vehicle excise tax under § 13-809 or
31 § 13-811 of the Transportation Article;

32 [(5)] (6) a lease of a motor vehicle that is leased for a period of at
33 least 1 year;

1 [(6)] (7) a rental of a motion picture, motion picture trailer, or
2 advertising poster for display on theater premises by a person whose gross receipts
3 from the activity related to the rental is subject to the admissions and amusement tax;
4 or

5 [(7)] (8) except for a rental, a sale of a vessel that is subject to the
6 excise tax under § 8-716 of the Natural Resources Article.

7 11-501.

8 (C) (1) **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN**
9 **EMPLOYER REQUIRED TO FILE AN ANNUAL STATEMENT UNDER § 10-911 OF**
10 **THIS ARTICLE SHALL COMPLETE AND FILE A SALES AND USE TAX RETURN AT**
11 **LEAST ANNUALLY.**

12 (2) **IF AN EMPLOYER IS NOT OTHERWISE REQUIRED TO FILE A**
13 **SALES AND USE TAX RETURN, THE RETURN REQUIRED UNDER PARAGRAPH (1)**
14 **OF THIS SUBSECTION SHALL BE FILED WITH THE REPORT REQUIRED UNDER §**
15 **10-911 OF THIS ARTICLE.**

16 12-105.

17 (a) The tobacco tax rate for cigarettes is:

18 (1) [50] **72** cents for each package of 10 or fewer cigarettes;

19 (2) [\$1.00] **\$1.44** for each package of at least 11 and not more than 20
20 cigarettes;

21 (3) [5.0] **7.2** cents for each cigarette in a package of more than 20
22 cigarettes; and

23 (4) [5.0] **7.2** cents for each cigarette in a package of free sample
24 cigarettes.

25 13-930.

26 (e) "Vendor payment":

27 (1) means any payment, other than a refund, made by the State to any
28 person; **AND**

29 (2) includes any expense reimbursement, **SALARY, WAGES, OR**
30 **PENSION PAID** to an employee of the State[; and

31 (3) does not include a person's salary, wages, or pension].

1 **Article – Transportation**

2 1–103.

3 (b) Before any license or permit may be renewed under this article, the
4 issuing authority shall verify through the Office of the Comptroller that the applicant
5 has paid all undisputed taxes and unemployment insurance contributions payable to
6 the Comptroller or the Secretary of Labor, Licensing, and Regulation or that the
7 applicant has provided for payment in a manner satisfactory to the unit responsible
8 for collection.

9 (c) Subsection (b) of this section does not apply to licenses issued under[:

10 (1) Title 13 of this article (motor vehicle registrations); or

11 (2)] Title 16 of this article (drivers' licenses).

12 **Article – Business Occupations and Professions**

13 1–204.

14 (a) **IN THIS SECTION, “LICENSE” INCLUDES ADMISSION TO THE BAR AS**
15 **DEFINED UNDER § 10–101 OF THIS ARTICLE.**

16 (B) Before any license or permit may be issued under this article, the
17 applicant shall certify to the issuing authority that the applicant has paid all
18 undisputed taxes and unemployment insurance contributions payable to the
19 Comptroller or the Department of Labor, Licensing, and Regulation or has provided
20 for payment in a manner satisfactory to the unit responsible for collection.

21 [(b)] (C) Before any license or permit may be renewed under this article, the
22 issuing authority shall verify through the office of the Comptroller that the applicant
23 has paid all undisputed taxes and unemployment insurance contributions payable to
24 the Comptroller or the Secretary of Labor, Licensing, and Regulation or that the
25 applicant has provided for payment in a manner satisfactory to the unit responsible
26 for collection.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 January 1, 2008.