# Department of Legislative Services

Maryland General Assembly
2011 Session

## FISCAL AND POLICY NOTE

House Bill 492 (Delegate Tarrant, *et al.*)
Economic Matters

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**Cigars - Sales of Fewer Than Four Per Package - Prohibited**

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This bill prohibits a retailer from purchasing from a tobacco manufacturer or wholesaler – or selling or otherwise giving away to any person – an "unpackaged cigar." The bill defines an unpackaged cigar to be a cigar not contained within a sealed packaged of at least four cigars. The bill also prohibits a wholesaler from selling or otherwise giving away to any person an unpackaged cigar.

This prohibition does not apply to a retailer whose primary business is the retail sale of tobacco products other than cigarettes, with the sale of other products being incidental to that business.

The bill does not apply to any cigar with a wholesale price of more than $2.

The bill takes effect July 1, 2011.

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## Fiscal Summary

**State Effect:** Potential minimal decrease in the other tobacco products (OTP) tax and sales tax revenues assessed on cigars beginning in FY 2012. Enforcement of the bill's provisions can likely be handled with existing resources.

**Local Effect:** Potential minimal decrease in highway user revenues. Local government expenditures are not affected.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** In general, the bill does not preempt any local law that imposes restrictions on the sale of unpackaged cigars if the local law is at least as restrictive as the bill. The Comptroller's Office must adopt regulations to enforce the provisions of the bill.

**Current Law/Background:** There is no prohibition against the sale of cigars in packages of less than four cigars. OTP, including cigars, are taxed at a rate equal to 15% of the wholesale price. In addition, the State sales tax of 6% is imposed on the final retail price of OTP.

The OTP tax totaled $11.8 million in fiscal 2010. Of the monthly wholesaler reports filed with the Comptroller's Office, cigars accounted for approximately 63% of total OTP taxes, with the remaining amount from snuff, chewing tobacco, and pipe and other tobacco. OTP tax revenues are expected to total $13.6 million in fiscal 2012.

Prince George's County has enacted similar restrictions on the sale of cigars. The law in Prince George's County specifies that applicable cigars must be sold in packages that include a minimum of five cigars, which is more stringent than the bill's requirement. Thus, the bill does not preempt the Prince George's County regulation, or any other proposal enacted by a local jurisdiction that is at least as restrictive as the bill's requirement for packaging.

The Field Enforcement Division (FED) of the Comptroller's Office enforces the sale of tobacco products in the State by investigating cigarette smuggling, enforcing trader's license violations, collecting delinquent sales and use taxes, and conducting routine inspections of licensed tobacco establishments (*i.e.*, manufacturers, wholesalers, and retailers). FED's enforcement unit includes 21 sworn police officers, 18 field agents, and 3 agent supervisors.

**State Fiscal Effect:** The bill prohibits the sale of a cigar with a wholesale price of more than $2 in packages of less than four by any store that is not considered a tobacco shop. Although the restriction may lead to a decrease in sales, any reduction is estimated to be minor due to the limited impact bundling would have on any potential sale and the limited scope of the bill. Most cigars with a wholesale price in excess of $2 are likely sold at stores not covered by the prohibition. Therefore, general fund revenues may decrease minimally beginning in fiscal 2012 due to a decrease in OTP and sales taxes assessed on cigars. Likewise, Transportation Trust Fund (TTF) revenues may decrease minimally beginning in fiscal 2012 due to decreased sales tax revenues.

**Local Fiscal Effect:** Local governments receive, as highway user revenues, a share of TTF revenues. Thus, highway user revenues may decrease minimally due to the bill. Local government expenditures are not affected.

## Additional Information

**Prior Introductions:** HB 238 of 2009, a similar bill, received an unfavorable report from the House Economic Matters Committee. Another similar bill, HB 609 of 2008, also received an unfavorable report from the House Economic Matters Committee.

**Cross File:** None.

**Information Source(s):** Baltimore City, Comptroller's Office, Department of Legislative Services

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