

SENATE BILL 452

C2, Q7

2lr1877
CF 2lr1642

By: **Senators Middleton, Astle, Glassman, Klausmeier, and Pipkin**

Introduced and read first time: February 2, 2012

Assigned to: Budget and Taxation and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Other Tobacco Products Licenses – Repeal**

3 FOR the purpose of repealing provisions of law related to the requirement that a
4 person have a license whenever the person acts in the State as an other tobacco
5 products manufacturer, retailer, storage warehouse, or wholesaler or
6 tobacconist; repealing certain record-keeping and reporting requirements for an
7 other tobacco products wholesaler; repealing the authority for the Comptroller
8 to adopt regulations to require a common carrier that brings other tobacco
9 products into the State to submit certain information to the Comptroller;
10 repealing certain requirements for a person who ships, imports, or sells other
11 tobacco products into or within the State; repealing certain prohibitions on
12 selling or shipping other tobacco products that are ordered or purchased by mail
13 or through a computer network, telephonic network, or other electronic
14 network; repealing certain prohibitions on delivery of other tobacco products
15 directly to a consumer; requiring a person who transports other tobacco
16 products by vehicle on a public road to have certain information in the vehicle;
17 repealing references to provisions repealed under this Act; repealing the
18 prohibition on a county, municipal corporation, special taxing district, or other
19 political subdivision from imposing a tax on other tobacco products; repealing
20 the requirement that a wholesaler shall complete and file with the Comptroller
21 a tobacco tax return for other tobacco products on or before a certain day;
22 requiring a wholesaler to complete and file with the Comptroller a tobacco tax
23 return for other tobacco products on a date specified by the Comptroller in
24 regulation; requiring the tobacco tax to be paid by the wholesaler who sells the
25 other tobacco products to a consumer; requiring a retailer or consumer to pay
26 the tobacco tax on other tobacco products on which the tobacco tax has not been
27 paid; requiring the Comptroller to adopt regulations establishing a system of
28 administering, collecting, and enforcing the tobacco tax on other tobacco
29 products; providing for specific regulations which the Comptroller may adopt to
30 establish a system of administering, collecting, and enforcing the tobacco tax on
31 other tobacco products; repealing a requirement that a person subject to the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 tobacco tax post security as an other tobacco products wholesaler; altering a
2 certain penalty for a person who willfully ships, imports, sells into or within, or
3 transports within the State other tobacco products on which the tobacco tax has
4 not been paid; altering the definition of certain terms; defining certain terms;
5 and generally relating to the regulation of other tobacco products in the State.

6 BY repealing

7 Article – Business Regulation
8 Section 16.5–101 through 16.5–218 and the title “Title 16.5. Other Tobacco
9 Products Licenses”
10 Annotated Code of Maryland
11 (2010 Replacement Volume and 2011 Supplement)

12 BY adding to

13 Article – Business Regulation
14 Section 16–217
15 Annotated Code of Maryland
16 (2010 Replacement Volume and 2011 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article – Business Regulation
19 Section 16–219
20 Annotated Code of Maryland
21 (2010 Replacement Volume and 2011 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article – Tax – General
24 Section 12–101, 12–102, 12–103, 12–104, 12–201, 12–202, 12–301, 12–302,
25 13–825(h), and 13–1015
26 Annotated Code of Maryland
27 (2010 Replacement Volume and 2011 Supplement)

28 BY adding to

29 Article – Tax – General
30 Section 12–306
31 Annotated Code of Maryland
32 (2010 Replacement Volume and 2011 Supplement)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
34 MARYLAND, That Section(s) 16.5–101 through 16.5–218 and the title “Title 16.5.
35 Other Tobacco Products Licenses” of Article – Business Regulation of the Annotated
36 Code of Maryland be repealed.

37 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
38 read as follows:

39 **Article – Business Regulation**

1 16-217.

2 THE COMPTROLLER BY REGULATION MAY REQUIRE A COMMON CARRIER
3 THAT BRINGS CIGARETTES INTO THE STATE TO SUBMIT TO THE COMPTROLLER
4 A COPY OF ANY FREIGHT BILL RELATING TO THE CIGARETTE SHIPMENT.

5 16-219.

6 (a) IN THIS SECTION, "OTHER TOBACCO PRODUCTS" HAS THE MEANING
7 STATED IN § 12-101 OF THE TAX - GENERAL ARTICLE.

8 (B) A person who transports cigarettes OR OTHER TOBACCO PRODUCTS by
9 vehicle on a public road shall have in the vehicle a delivery ticket or invoice that
10 states:

11 (1) the name and address of the seller or consignor;

12 (2) the name and address of a buyer or consignee who is:

13 (i) a person in the State authorized by Title 12 of the Tax -
14 General Article to hold unstamped cigarettes OR OTHER TOBACCO PRODUCTS on
15 which the tobacco tax has not been paid; or

16 (ii) a person in another jurisdiction authorized to hold cigarettes
17 OR OTHER TOBACCO PRODUCTS on which the tax imposed by that jurisdiction has
18 not been paid; and

19 (3) the quantity and brands of the cigarettes OR OTHER TOBACCO
20 PRODUCTS that are being transported.

21 [(b) The Comptroller by regulation may require a common carrier that brings
22 cigarettes into the State to submit to the Comptroller a copy of any freight bill relating
23 to the cigarette shipment.]

24 **Article - Tax - General**

25 12-101.

26 (a) In this title the following words have the meanings indicated.

27 (b) "Cigarette" means any size or shaped roll for smoking that is made of
28 tobacco or tobacco mixed with another ingredient and wrapped in paper or in any
29 other material except tobacco.

1 (c) ["Manufacturer" means a person who acts as a manufacturer as defined
2 in § 16–201 of the Business Regulation Article or as an other tobacco products
3 manufacturer as defined in § 16.5–101 of the Business Regulation Article.

4 (d) "Other tobacco product" means:

5 (1) any cigar or roll for smoking, other than a cigarette, made in whole
6 or in part of tobacco; or

7 (2) any other tobacco or product made primarily from tobacco, other
8 than a cigarette, that is intended for consumption by smoking or chewing or as snuff.

9 [(e) "Other tobacco products retailer" means a person authorized under §
10 16.5–205(b) of the Business Regulation Article to purchase other tobacco products on
11 which the tobacco tax has not been paid.

12 (f) (D) "Sell" means to exchange or transfer, or to make an agreement to
13 exchange or transfer, title or possession of property, in any manner or by any means,
14 for consideration.

15 [(g) (E) "Tax stamp" means a device in the design and denomination that
16 the Comptroller authorizes by regulation for the purpose of being affixed to a package
17 of cigarettes as evidence that the tobacco tax is paid.

18 [(h) "Tobacconist" means a person authorized under § 16.5–205(e) of the
19 Business Regulation Article to purchase other tobacco products on which the tobacco
20 tax has not been paid.

21 (i) (F) "Unstamped cigarettes" means a package of cigarettes to which tax
22 stamps are not affixed in the amount and manner required in § 12–304 of this title.

23 [(j) (G) "Wholesale price" means the price for which a wholesaler buys
24 other tobacco products, exclusive of any discount, trade allowance, rebate, or other
25 reduction.

26 [(k) (H) "Wholesaler" means, unless the context requires otherwise[,]:

27 (1) a person who acts as a wholesaler as defined in § 16–201 of the
28 Business Regulation Article [or as an other tobacco products wholesaler as defined in §
29 16.5–101 of the Business Regulation Article]; OR

30 (2) A PERSON WHO:

31 (I) HOLDS OTHER TOBACCO PRODUCTS FOR SALE TO
32 ANOTHER PERSON FOR RESALE; OR

1 **(II) SELLS OTHER TOBACCO PRODUCTS TO ANOTHER**
2 **PERSON FOR RESALE.**

3 12–102.

4 (a) Except as provided in § 12–104 of this subtitle, a tax is imposed on
5 cigarettes and other tobacco products in the State.

6 (b) A county, municipal corporation, special taxing district, or other political
7 subdivision of the State may not impose a tax on cigarettes [or other tobacco
8 products].

9 12–103.

10 (a) A rebuttable presumption exists that any cigarette or other tobacco
11 product in the State is subject to the tobacco tax.

12 (b) Cigarettes or other tobacco products are contraband tobacco products if
13 they:

14 (1) are possessed or sold in the State in a manner that is not
15 authorized under this title or under Title 16 [or Title 16.5] of the Business Regulation
16 Article; or

17 (2) are transported by vehicle in the State by a person who does not
18 have, in the vehicle, the records required by § 16–219 [or § 16.5–215] of the Business
19 Regulation Article for the transportation of cigarettes or other tobacco products.

20 (c) A person who possesses cigarettes or other tobacco products has the
21 burden of proving that the cigarettes or other tobacco products are not subject to the
22 tobacco tax.

23 12–104.

24 (a) “Consumer” means a person who possesses cigarettes or other tobacco
25 products for a purpose other than selling or transporting the cigarettes or other
26 tobacco products.

27 (b) The tobacco tax does not apply to:

28 (1) cigarettes that a licensed wholesaler under Title 16 of the Business
29 Regulation Article is holding for sale outside the State or to a United States armed
30 forces exchange or commissary;

1 (2) other tobacco products that [an other tobacco products] A
2 wholesaler [licensed under Title 16.5 of the Business Regulation Article] is holding for
3 sale outside the State or to a United States armed forces exchange or commissary; or

4 (3) cigarettes or other tobacco products that:

5 (i) a consumer brings into the State:

6 1. if the quantity brought from another state does not
7 exceed:

8 A. for a nonresident consumer traveling through this
9 State, other tobacco products having a retail value of \$25 or 1 carton of cigarettes; or

10 B. for any other consumer, other tobacco products having
11 a retail value of \$5 or 2 packages of cigarettes; or

12 2. if the quantity brought from a United States armed
13 forces installation or reservation does not exceed:

14 A. for a consumer who is a member of an armed forces
15 unit or who is entitled by law to make a purchase at an armed forces exchange, other
16 tobacco products having a retail value of \$50 or 2 cartons of cigarettes; or

17 B. for any other consumer, other tobacco products having
18 a retail value of \$5 or 2 packages of cigarettes that were bought at an armed forces
19 exchange or commissary;

20 (ii) a person is transporting by vehicle in the State if the person
21 has, in the vehicle, the records required by § 16–219 [or § 16.5–215] of the Business
22 Regulation Article for the transportation of cigarettes or other tobacco products; or

23 (iii) are held in storage in a licensed storage warehouse on behalf
24 of a licensed cigarette manufacturer [or an other tobacco products manufacturer].

25 12–201.

26 (a) A manufacturer shall complete and file with the Comptroller a tobacco
27 tax return:

28 (1) on or before the 15th day of the month that follows the month in
29 which the manufacturer distributes in the State free sample cigarettes of the
30 manufacturer; and

31 (2) if the Comptroller so specifies, by regulation, on other dates for
32 each month in which the manufacturer does not distribute any sample cigarettes.

1 (b) [A licensed other tobacco products manufacturer shall file the
2 information return that the Comptroller requires.

3 (c) A licensed storage warehouse operator [and a licensed other tobacco
4 products storage warehouse operator] shall file the information return that the
5 Comptroller requires.

6 12-202.

7 (a) A wholesaler shall complete and file with the Comptroller a tobacco tax
8 return:

9 (1) for cigarettes:

10 (i) on or before the 21st day of the month that follows the
11 month in which the wholesaler has the first possession, in the State, of unstamped
12 cigarettes for which tax stamps are required; and

13 (ii) if the Comptroller so specifies, by regulation, on other dates
14 for each month in which the wholesaler does not have the first possession of any
15 unstamped cigarettes in the State; and

16 (2) for other tobacco products, on [or before the 21st day of the month
17 that follows the month in which the wholesaler has possession of other tobacco
18 products on which the tobacco tax has not been paid] **THE DATES AND FOR THE
19 PERIODS THAT THE COMPTROLLER SPECIFIES BY REGULATION.**

20 (b) Each return shall state the quantity of cigarettes or the wholesale price of
21 other tobacco products sold during the period that the return covers.

22 12-301.

23 In this subtitle, "licensed wholesaler" means a wholesaler who is licensed under
24 Title 16, Subtitle 2 of the Business Regulation Article to act as a wholesaler [or under
25 Title 16.5, Subtitle 2 of the Business Regulation Article to act as an other tobacco
26 products wholesaler].

27 12-302.

28 (a) A manufacturer of sample cigarettes shall pay the tobacco tax on those
29 cigarettes distributed in the State without charge, in the manner that the Comptroller
30 requires by regulation, with the return that covers the period in which the
31 manufacturer distributed those cigarettes.

1 (b) The wholesaler who first possesses in the State unstamped cigarettes for
2 which tax stamps are required shall pay the tobacco tax on those cigarettes by buying
3 and affixing tax stamps.

4 (c) (1) The tobacco tax on other tobacco products shall be paid by the
5 wholesaler who sells the other tobacco products to a retailer **OR CONSUMER** in the
6 State.

7 (2) **IF A RETAILER OR CONSUMER POSSESSES OTHER TOBACCO**
8 **PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID,**
9 **THE RETAILER OR CONSUMER SHALL PAY THE TOBACCO TAX ON THOSE OTHER**
10 **TOBACCO PRODUCTS.**

11 [(d) (1) A licensed other tobacco products retailer or a licensed tobacconist
12 shall pay the tobacco tax on other tobacco products on which the tobacco tax has not
13 been paid by filing a quarterly tax return, with any supporting schedules, on forms
14 provided by the Comptroller on the following dates covering tax liabilities in the
15 preceding quarter:

16 (i) January 21;

17 (ii) April 21;

18 (iii) July 21; and

19 (iv) October 21.

20 (2) A licensed other tobacco products retailer or a licensed tobacconist
21 required to file a tax return under paragraph (1) of this subsection shall pay a tobacco
22 tax at the rate provided in § 12-105(b) of this title based on the invoice amount
23 charged by the licensed other tobacco products manufacturer, exclusive of any
24 discount, trade allowance, rebate, or other reduction.]

25 **12-306.**

26 (A) **BY REGULATION, THE COMPTROLLER SHALL ESTABLISH A SYSTEM**
27 **OF ADMINISTERING, COLLECTING, AND ENFORCING THE TOBACCO TAX ON**
28 **OTHER TOBACCO PRODUCTS.**

29 (B) **REGULATIONS ADOPTED UNDER THIS SECTION MAY INCLUDE:**

30 (1) **SELF-ASSESSMENT, FILING OF RETURNS, AND MAINTENANCE**
31 **AND RETENTION OF RECORDS BY WHOLESALERS OR RETAILERS;**

32 (2) **PAYMENT OF THE TAX BY:**

1 **(I) A WHOLESALER WHO SELLS OTHER TOBACCO**
2 **PRODUCTS TO A RETAILER OR CONSUMER IN THE STATE; OR**

3 **(II) A RETAILER OR CONSUMER WHO POSSESSES OTHER**
4 **TOBACCO PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT**
5 **BEEN PAID; AND**

6 **(3) ANY OTHER PROVISION THAT THE COMPTROLLER CONSIDERS**
7 **NECESSARY TO EFFICIENTLY AND ECONOMICALLY ADMINISTER, COLLECT, AND**
8 **ENFORCE THE TAX.**

9 13–825.

10 (h) (1) The Comptroller may require a person subject to the tobacco tax to
11 post security for the tax in the following amounts:

12 (i) for a manufacturer or wholesaler:

- 13 1. \$10,000, plus
14 2. the amount, if any, by which the tobacco tax due for
15 any 1 month exceeds \$10,000[.]; **AND**

16 (ii) for a subwholesaler or vending machine operator:

- 17 1. \$1,000, plus
18 2. the amount, if any, by which the tobacco tax due for
19 any 1 month exceeds \$1,000[; and

20 (iii) for an other tobacco products wholesaler:

- 21 1. \$5,000, plus
22 2. the amount, if any, by which the tobacco tax due for
23 any 1 month exceeds \$5,000].

24 (2) Except as provided in paragraph (5) of this subsection, the
25 Comptroller may exempt a person from posting security for the tobacco tax if the
26 person is and has been for the past 5 years:

27 (i) licensed as required under § 16–202 of the Business
28 Regulation Article to act as a wholesaler [or § 16.5–201 to act as an other tobacco
29 products wholesaler]; and

1 (ii) 1. in continuous compliance with the tobacco tax laws,
2 as determined under paragraph (3) of this subsection; and

3 2. in continuous compliance with the conditions of the
4 person's security posted under this subsection.

5 (3) For purposes of paragraph (2) of this subsection, a person is in
6 continuous compliance with the tobacco tax laws for a period if the person has not, at
7 any time during that period:

8 (i) failed to pay any tobacco tax or any tobacco tax assessment
9 when due;

10 (ii) failed to file a tobacco tax return when due; or

11 (iii) otherwise violated any of the provisions of Title 12 or Title
12 13 of this article or Title 16 [or Title 16.5] of the Business Regulation Article.

13 (4) (i) An exemption granted under paragraph (2) of this
14 subsection is effective only to the extent that a person's potential tobacco tax liability
15 does not exceed an amount determined by the Comptroller based on the person's
16 experience during the 5-year compliance period under paragraph (2) of this
17 subsection.

18 (ii) The Comptroller may revoke an exemption granted to a
19 person under paragraph (2) of this subsection if the person at any time fails to be in
20 continuous compliance with the tobacco tax laws, as described in paragraph (3) of this
21 subsection.

22 (iii) The Comptroller may reinstate an exemption revoked under
23 subparagraph (ii) of this paragraph if the person meets the requirements of paragraph
24 (2)(i) and (ii) of this subsection for a period of 2 years following the revocation.

25 (5) The Comptroller may not exempt a person from posting a bond or
26 other security for the tobacco tax unless the Comptroller determines that the person is
27 solvent and financially able to pay the person's potential tobacco tax liability.

28 (6) If a corporation is granted an exemption from posting a bond or
29 other security for the tobacco tax, any officer of the corporation who exercises direct
30 control over its fiscal management is personally liable for any tobacco tax, interest and
31 penalties owed by the corporation.

32 13-1015.

33 A person who willfully ships, imports, sells into or within, or transports within,
34 this State cigarettes or other tobacco products on which the tobacco tax has not been

1 paid in violation of Title 12 of this article or § [16–219, § 16–222, § 16.5–215, or §
2 16.5–216] **16–219 OR § 16–222** of the Business Regulation Article is guilty of a felony
3 and, on conviction, is subject to a fine not exceeding \$50 for each carton of cigarettes
4 [or each package of other tobacco products] transported or imprisonment not
5 exceeding 2 years or both.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 July 1, 2012.