

Chapter 509

(Senate Bill 452)

AN ACT concerning

Other Tobacco Products Licenses – Repeal – Restrictions on Sale, Distribution, and Shipment – Exemptions

FOR the purpose of providing that certain provisions of law relating to the regulation of other tobacco products do not apply to a seller located outside the State when selling, holding for sale, shipping, or delivering certain cigars or pipe tobacco to consumers in the State; providing that certain provisions of law regulating the sale and distribution of other tobacco products do not apply to the order, purchase, sale, or shipment of certain cigars or pipe tobacco by a licensed other tobacco products retailer or licensed tobacconist; requiring the Comptroller to submit a certain report by a certain date on a certain policy regarding the direct shipment of premium cigars and pipe tobacco to consumers in Maryland; and generally relating to the regulation of other tobacco products. ~~repealing provisions of law related to the requirement that a person have a license whenever the person acts in the State as an other tobacco products manufacturer, retailer, storage warehouse, or wholesaler or tobacconist; repealing certain record-keeping and reporting requirements for an other tobacco products wholesaler; repealing the authority for the Comptroller to adopt regulations to require a common carrier that brings other tobacco products into the State to submit certain information to the Comptroller; repealing certain requirements for a person who ships, imports, or sells other tobacco products into or within the State; repealing certain prohibitions on selling or shipping other tobacco products that are ordered or purchased by mail or through a computer network, telephonic network, or other electronic network; repealing certain prohibitions on delivery of other tobacco products directly to a consumer; requiring a person who transports other tobacco products by vehicle on a public road to have certain information in the vehicle; repealing references to provisions repealed under this Act; repealing the prohibition on a county, municipal corporation, special taxing district, or other political subdivision from imposing a tax on other tobacco products; repealing the requirement that a wholesaler shall complete and file with the Comptroller a tobacco tax return for other tobacco products on or before a certain day; requiring a wholesaler to complete and file with the Comptroller a tobacco tax return for other tobacco products on a date specified by the Comptroller in regulation; requiring the tobacco tax to be paid by the wholesaler who sells the other tobacco products to a consumer; requiring a retailer or consumer to pay the tobacco tax on other tobacco products on which the tobacco tax has not been paid; requiring the Comptroller to adopt regulations establishing a system of administering, collecting, and enforcing the tobacco tax on other tobacco~~

~~products; providing for specific regulations which the Comptroller may adopt to establish a system of administering, collecting, and enforcing the tobacco tax on other tobacco products; repealing a requirement that a person subject to the tobacco tax post security as an other tobacco products wholesaler; altering a certain penalty for a person who willfully ships, imports, sells into or within, or transports within the State other tobacco products on which the tobacco tax has not been paid; altering the definition of certain terms; defining certain terms; and generally relating to the regulation of other tobacco products in the State.~~

~~BY repealing~~

~~Article – Business Regulation~~

~~Section 16.5-101 through 16.5-218 and the title “Title 16.5. Other Tobacco Products Licenses”~~

~~Annotated Code of Maryland~~

~~(2010 Replacement Volume and 2011 Supplement)~~

~~BY adding to~~

~~Article – Business Regulation~~

~~Section 16-217~~

~~Annotated Code of Maryland~~

~~(2010 Replacement Volume and 2011 Supplement)~~

BY adding to

Article – Business Regulation

Section 16.5-103 to be under the amended subtitle “Subtitle 1. Definitions: General Provisions”

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,

Article – Business Regulation

Section ~~16-219~~ 16.5-217

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Tax – General~~

~~Section 12-101, 12-102, 12-103, 12-104, 12-201, 12-202, 12-301, 12-302, 13-825(h), and 13-1015~~

~~Annotated Code of Maryland~~

~~(2010 Replacement Volume and 2011 Supplement)~~

~~BY adding to~~

~~Article – Tax – General~~

~~Section 12-306~~

~~Annotated Code of Maryland~~

~~(2010 Replacement Volume and 2011 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~Section(s) 16.5-101 through 16.5-218 and the title "Title 16.5-Other Tobacco Products Licenses" of Article Business Regulation of the Annotated Code of Maryland be repealed.~~

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

Article – Business Regulation

Subtitle 1. Definitions; GENERAL PROVISIONS.

16.5-103.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THIS TITLE DOES NOT APPLY TO A SELLER LOCATED OUTSIDE THE STATE WHEN SELLING, HOLDING FOR SALE, SHIPPING, OR DELIVERING PREMIUM CIGARS OR PIPE TOBACCO TO CONSUMERS IN THE STATE.

16.5-217.

(a) This section applies to a person who is engaged in the business of selling or distributing other tobacco products.

(b) (1) THIS SUBSECTION DOES NOT APPLY TO THE ORDER, PURCHASE, SALE, OR SHIPMENT OF PREMIUM CIGARS OR PIPE TOBACCO BY A LICENSED OTHER TOBACCO PRODUCTS RETAILER OR LICENSED TOBACCONIST.

[(1)] (2) Except as provided in paragraph [(2)] (3) of this subsection, a person covered under this section may not:

(i) sell or ship other tobacco products, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network by a consumer or other unlicensed recipient, directly to a consumer or other unlicensed recipient in this State; or

(ii) cause other tobacco products, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network by a consumer or other unlicensed recipient, to be shipped directly to a consumer or other unlicensed recipient in this State.

[(2)] (3) A licensed other tobacco products retailer or licensed tobacconist may deliver not more than two packages of other tobacco products directly to a consumer if the delivery is made by the licensed other tobacco products retailer or

licensed tobacconist or an employee of the licensed other tobacco products retailer or licensed tobacconist.

(c) (1) A licensee who sells or ships other tobacco products in violation of this section or causes other tobacco products to be shipped in violation of this section is:

(i) subject to discipline by the Comptroller under § 16.5–208 of this subtitle; and

(ii) guilty of a felony and on conviction is subject to a fine not exceeding \$50 for each package of other tobacco products transported or imprisonment not exceeding 2 years or both.

(2) A person other than a licensee who sells or ships other tobacco products in violation of this section or causes other tobacco products to be shipped in violation of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$50 for each package of other tobacco products transported or imprisonment not exceeding 2 years or both.

~~16-217.~~

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

~~16-219.~~

~~(a) IN THIS SECTION, “OTHER TOBACCO PRODUCTS” HAS THE MEANING STATED IN § 12-101 OF THE TAX GENERAL ARTICLE.~~

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

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

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

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

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

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

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

~~Article Tax General~~

~~12-101.~~

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

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

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

~~(d)] "Other tobacco product" means:~~

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

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

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

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

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

~~[(h)]~~ ~~“Tobacconist” means a person authorized under § 16.5-205(e) of the Business Regulation Article to purchase other tobacco products on which the tobacco tax has not been paid.~~

~~[(i)] (F)~~ ~~“Unstamped cigarettes” means a package of cigarettes to which tax stamps are not affixed in the amount and manner required in § 12-304 of this title.~~

~~[(j)] (G)~~ ~~“Wholesale price” means the price for which a wholesaler buys other tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.~~

~~[(k)] (H)~~ ~~“Wholesaler” means, unless the context requires otherwise[,]:~~

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

~~(2) A PERSON WHO:~~

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

~~(II) SELLS OTHER TOBACCO PRODUCTS TO ANOTHER PERSON FOR RESALE.~~

~~12-102.~~

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

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

~~12-103.~~

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

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

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

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

~~(e) A person who possesses cigarettes or other tobacco products has the burden of proving that the cigarettes or other tobacco products are not subject to the tobacco tax.~~

~~12-104.~~

~~(a) "Consumer" means a person who possesses cigarettes or other tobacco products for a purpose other than selling or transporting the cigarettes or other tobacco products.~~

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

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

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

~~(3) cigarettes or other tobacco products that:~~

~~(i) a consumer brings into the State:~~

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

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

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

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

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

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

~~(ii) a person is transporting by vehicle in the State if the person has, in the vehicle, the records required by § 16-210 [or § 16.5-215] of the Business Regulation Article for the transportation of cigarettes or other tobacco products; or~~

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

~~12-201.~~

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

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

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

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

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

~~12-202.~~

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

~~(1) for cigarettes:~~

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

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

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

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

~~12-301.~~

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

~~12-302.~~

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

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

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

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

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

~~(i) January 21;~~

~~(ii) April 21;~~

~~(iii) July 21; and~~

~~(iv) October 21.~~

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

~~12-306.~~

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

~~(B) REGULATIONS ADOPTED UNDER THIS SECTION MAY INCLUDE:~~

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

~~(2) PAYMENT OF THE TAX BY:~~

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

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

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

~~13-825.~~

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

~~(i) for a manufacturer or wholesaler:~~

~~1. \$10,000, plus~~

~~2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$10,000[.]; AND~~

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

~~1. \$1,000, plus~~

~~2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$1,000]; and~~

~~(iii) for an other tobacco products wholesaler:~~

~~1. \$5,000, plus~~

~~2. the amount, if any, by which the tobacco tax due for any 1 month exceeds \$5,000].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~13-1015.~~

~~A person who willfully ships, imports, sells into or within, or transports within, this State cigarettes or other tobacco products on which the tobacco tax has not been paid in violation of Title 12 of this article or § [16-219, § 16-222, § 16.5-215, or § 16.5-216] 16-219 OR § 16-222 of the Business Regulation Article is guilty of a felony and, on conviction, is subject to a fine not exceeding \$50 for each carton of cigarettes [or each package of other tobacco products] transported or imprisonment not exceeding 2 years or both.~~

SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That:

(a) On or before November 1, 2012, the Comptroller shall submit a report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the viability and efficacy of instituting in Maryland the policy of permitting direct shipment of premium cigars and pipe tobacco to consumers in the State.

(b) The report shall include:

(1) an evaluation of related fiscal, tax, and other public policy and regulatory issues; and

(2) a determination regarding:

(i) the best practices for preventing access by minors to premium cigars and pipe tobacco that is shipped directly to consumers;

(ii) any significant increase or decrease in access to or demand for premium cigars and pipe tobacco by minors that has been documented as the result of direct shipment of premium cigars and pipe tobacco;

(iii) the best means for collecting relevant tax revenues;

(iv) the benefits and costs to consumers; and

(v) the effect of direct premium cigar and pipe tobacco shipment laws on in-State licensed other tobacco products retailers and tobacconists and other local businesses.

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

Approved by the Governor, May 22, 2012.